

EIRENARCHA:

or of

The office of the Iustices
of Peace, in foure
Bookes:

Gathered 1579: first pub-
lished 1581: and reuised, cor-
rected, and enlarged, in the
31. yeere of the Peaceable raigne
of our most gracious Queene
ELIZABETH:

By WILLIAM LAMBARD
of Lincolnes Inne, Gent.

Whereunto is added the newly refor-
med COMMISSION of the
Peace, & an APPENDIX of
sundry PRECEDENTS
touching matters of the
Peace.

Ha tibi artes erunt, pacique im-
ponere morem.

AT LONDON,
Printed by Ralph Newbery.
Cum Priuilegio.

Anno Domini,

1591.

Prud

Bound volume of the
offices of the Iustices of the
Peace of 1607.

35. C. 41.



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A forewarning to the Reader.

IN Orasmuch as in this *Michaelmas* Terme, 1590. since the last impression of this *Volume*, it hath pleased my *Lords* (sir *Christopher Wray* the chiefe Iustice of *England*, sir *Edmund Anderson* the chiefe Iustice of the *Common Place*, and sir *Roger Mannwood* the chiefe Baron of the *Eschequer*) with the rest of the *Judges* and *Barons* of the *Course*, by generall conference had amongst themselves, to purge the late *Commission* of the Peace, from all those imperfections for which this booke of mine had long together challenged it: and (after a carefull reſyening thereof) to recommend that their labour to the right honorable sir *Christopher Hatton*, the now lord *Chancellor* of *England*, as a meete patterne of a *Commission* of the Peace to be vniformly put in vre throughout the Realme: who also hath accordingly accepted thereof, and commanded the same to be sealed and sent abroad: I haue thought good, as well for preuenting the *Printers* losse (who hath yet some good remnant of the copies of this late impression in his house) as also for the better helpe & furtherance of the *Readers* (into whose

whose hands the same copies may be dispersed) not onely to withdrawe the former *Commission* out of this present booke, and in place thereof to insert that other which is so lately reformed, but also to admonish the Readers of all the other places of this booke, in which there is any vnseruiceable mention of the former *Commission*: least otherwise, this booke it selfe be as iustly reproched for carying abroad a *Commission* that is not now in vse, as it reprooued the olde *Commission* for proclayming *Statutes* that were not then in force.

The *Commission* it selfe therefore, together with a short *Explication* of the same, and with a *Conference* of it with that former, shal appeare in the 8. and 9. *Chapters* of the first booke of this *Volume*, where the olde *Commission* and the *Observations* thereof, did stand before.

The rest that lie dispersed, (& may likewise easilie be striken out of this Booke, or bee otherwise holpen,) shall thus bee found out.

Pag. 25. almost at the end thereof, take out these wordes: which is more then their owne Commission doeth afoord to this present day.

Pag. 181. about the midst thereof, take out these wordes, But also by expresse speech in the Commissiō it self, euery Warden of the Peace hath the Statute of Northampton committed to his charge, and the wordes, not onely in the first part of that periode.

Pag. 196. towards the end thereof, take out these wordes, As for those lawes of Liueries, I see not, &c. till the ende of that page.

Pag. 197. take out these wordes, But (as I haue said before) a reformation of the present Cōmission of the Peace, would easily remooue these doubts from vs.

Pag. 200. for, Statutes mentioned in the Commission, read Statutes meant in the Commission.

Pag. 376. in the third line thereof, for third *Assignauimus*, read second *Assignauimus*. And put out these wordes: for the words of the second *Assignauimus*, doe giue no power to heare and determine, but onely to make enquire.

Pag. 378. in the 8. line thereof, read *Mandamus*, for *Mandauimus*.

Pag. 379. at the end thereof, in stead of, for the wordes of the said *Mandauimus* in the

the Cōmission to the Shiriffe be, *Coram vobis, seu aliquibus vestrum*, read thus, for the wordes of the said *Mandamus*, in the Commiſſiō to the Shiriffe be, *Coram vobis, vel aliquibus huiusmodi duobus vel pluribus vestrum, ut prædictum est*.

Pag. 383. towards the end thereof, for *Coram vobis & dictis socijs vestris venire faciatis*, read thus, *Coram te & dictis socijs tuis venire facias*.

Pag. 396. A litle after the middelt thereof, take out these wordes, and that (saith M. Marrow) may bee then taken by any two Iustices, though neither of them be of the *Quorum*.

Pag. 401. line 8. for, Statutes therein contained, read Statutes implied therein.

Pag. 414. take out of the charge, all the first article of the lay causes, which concerneth the counterfayting of the Queenes money.

Pag. 510. l. 6. take out the wordes, at whose Sute, and so along till the end of the 22. line of that page.

Pag. 520. li. 22. to these wordes, Sitting in the Court in the Sessions, adde these wordes, and so that the one of them be of the *Quorum*.

Pag. 527. to the last word of the 28. line thereof, adde these wordes, the one being of the *Quorum* also.

Pag. 550. take out the whole Paragraph
concer.

concerning Witchcraft there, because the matter thereof is altered by the reformation of the Commission.

Pag. 553. li. 10. take out the wordes, So I doe assure, &c. till the end of the 18. line thereof.

Pag. 572. line 3. for, in the Commission, read these wordes, in the former Commission, which also is now expressly declared in the new.

Pag. 617. towards the midst thereof, for the wordes, *ad certos dies & loca, quos vos, vel aliqui vestrum, &c.* read thus, *ad certos dies & loca, quæ vos, vel aliqui huiusmodi duo, vel plures vestrum, &c.*

These things if it please thee (good Reader) to marke with some strokes of thy Penne in these severall Pages of thy booke, it may be serviceable vnto thee, notwithstanding any change of matter that is offered by this late reformation of the Commission.

1 **A**ND yet for thy better furniture in this service of the Peace, it is also needfull (good Reader) that thou adde to the 4. Chapter of the 2. booke of this Volume, the points of the new Statute, 31. Eliz. c. 11. concerning the restitution of possession.

2 Also, that thou adioine to the title of Coniuration (pag. 410.) the residue of all that Statute, 5. El. ca. 16. of Witchcraft, Inchantment, &c. because all the partes thereof are
nota

now by this Commission of the Peace to be enquired of, heard, and determined.

3 Likewise that thou adde to the Felonies in the Charge (pag. 422.) the Felonie of Embeseling the habiliments of Warre, ordained by 31. Eliz. ca. 4.

4 Furthermore, that thou insert in the Charge (pag. 469.) the Statute 31. El. cap. 12. concerning the selling of Hories in Faires or Markets: and (pag. 472.) the Statute 31. Eliz. cap. 7. touching Cotages and Inmates,

All which matters are endued with the life of lawe, since the last Impression of this present Booke.





THE PROHEME,

to the EIRENARCHA, Or,
Booke of the Office of the
Iustices of Peace.



To write of the
Office and Dutie
of Iustices of the
Peace, after M. Mar-
row (whose learned
Reading in that be-
halfe made the priu-
yeare of King Hen-
rie the seventh, is in
many hands to be scene) and after the reue-
rend Iustice Fitzherbert (who published an
excellent treatise thereof, which is yet euery
where to be had) may at the first seeme no lesse
vnauisedly done, then if a man should bring
Owles to *Athens* (as the *Prouerbe* is) or
sticks into a growing Wood or Copse. Now
be it, if it be considered, that since their time,
this Office is charged with many Statutes,

B. i.

which

which were not made when their Writings were penned : and if it be weighed also, that sundrie things in them had then the force of Law, which now at this day they haue lost by alteration of like authoritie : It can not bee thought altogether in vaine, to conferre their Writings with the Booke cases, and Statutes that haue arisen of latter times, & out of them all to collect some discourse, that may serue for the present age, wherein we now liue, and somewhat further the good endeouour of such gentlemen as be not trained vp in the continuall studie of the lawes.

In which doing, as I doe meane to rob no man of his right, but to peeke to each one the due praise of his owne, lest (as the Poet said)

Moneat Cornicularisum,

Furtinis nudata coloribus:

So, if I my selfe shall be found here and there to dissent in opinion from other men, I desire heartily, that my good meaning be not euill interpreted, that my allegations & reasons be weighed indifferently, and that the respect of my person bring no prejudice to the thing in question.

The diuision
of this worke.

The whole labour I haue thought good (for helpe of the Readers memory) to breake into foure seuerall Bookes, intending to spend the first in a summarie consideration & Theorique of the whole office belonging to this Iustice :

Iustice : and in the other three to set forth the whole practize of the same, as well at home, as at the Sessions : Dealing in the second, with those causes which one Iustice alone, and in the third with those which moe Iustices may undertake, without the helpe of the Session of the Peace : and in the fourth, handling such matters, as haue regard to those Sessions.



THE FIRST BOOKE,
containing a THEORICQUE
 of the office of the *Iustices*
 of Peace.

What *Iustices* of the Peace be,
 and why they are called
Iustices.

CAP. I.

A definition
 (or description)
 of *Iustices*
 of the Peace.



IUSTICES of the
 Peace, be Judges of
 Record appointed by
 the Queene to be Iu-
 stices within certain
 limites, for the Con-
 seruatiō of the Peace,
 and for the execution
 of sundry things cō-

prehended in their Commission, and in diuers
 lawes committed vnto them.

Why they be
 called *Iustices.*

These, and many other Iudiciall officers in
 our law, be called Iustices (*per metonymiam*
subiecti) because they doe (or should doe) law
 and Iustice. For in many olde Histories, the
 Chiefe Iustice of England, is termed, *Capita-*
lis Iustitia, and *Prima* (*post Regem*) in *An-*
glia, Iustitia: and the Originall Writtes that
 are

are in M. Glanvils Booke (which was written vnder the raigne of king Henry the second) haue this forme, *quod sit coram me, vel Iustitijs meis*: And this (no doubt) was done of speciall purpose, and to the end, that the mention of their name, should put them in mind of their office, & should continually (as it were) sollicite them to administer Iustice, for whose sake they were appointed.

But in the dayes of King Henry the third, M. Bract. (who reduced the body of our law into Latine, and therein imitated the Methode of the Ciuile Lawyers) chaunged the worde *Iustitijs* into *Iustitiarijs*, (how Latine like, let them iudge that can skill) and setteth downe the Writs accordingly, *coram Iustitiarijs nostris*. Since which time, not only all our Writs that commaund appearance before the Iustices at *Westminster*, do vse the word *Iustitiarijs*, but all Commissions of Sewers, of the Peace, of Oyer and Terminer, and such like, doe obserue the same forme also.

And of this it commeth, that M. Fitzherbert (in his treatise of the Iustices of Peace) calleth them Iusticers (contractly for Iusticiars) and not Iustices, as wee commonly (and not altogether vnproperly) doe name them.

Of the signification of this word Peace.

CAP. II.

Peace, hath
many signi-
fications.

OF the Latine word *Pax*, the Nor-
mans framed their *Paix*, and wee
out of that, our Peace: which name
hath sundry significations in the
holy Scripture: For there is an inward, and
an outward Peace. And this inward Peace, is
either good or euill: First then, there is *pax a-*
pud Deum, that is to say, our reconciliation
made with God the father, by the death of
Christ his sonne, who is *pax nostra*, and hath
appeased the wrath of God for our sinnes.

Out of this proceedeth an other inward
Peace, named the Peace of Conscience, for that
our conscience is (by faith in Christ) at Peace,
both with God and it selfe. The euill inward
Peace, is y^e same wherof our Sauour Christ
spake, saying: *Pacem do vobis, non quemad-*
modū mundus dat: And this Peace, the King-
ly Prophet Dauid calleth *Pacem peccatorum*,
because it is no better than carnall securitie.

The outward Peace, hath respect to other
men, and that is of two sortes also: the one is
opposed (or set) against all manner of striving
and contention, whether it be in countenance,
gesture, word, or worke: of the which S. Paule
spake to the Romans in these wordes: *Si fieri*
potest,

potest, quantum in vobis est, cum omnibus hominibus pacem habetote: And in the same meaning, the Latine men say, *Pace tua*, by your leaue, or fauour, without your offence, or displeasure. The other is onely an abstinence from actuall force, and offer of violence, and is rather contrary to *arma, praelium, and bellum*, (which can not bee without force, or armes) then it is to *lis, pugna, or certamen*, which (as Laurence Valla confesseth) may be *nudis verbis & citra arma*. And hereof also our Saviour Christ spake, when he sayd, *Non veni ut mitterem pacem, sed gladium*.

The law of our Realme likewise useth the word Peace diuersly, but yet so, as it is altogether occupied about these outward Peaces. For, as Cicero said of fraudes, *aliter leges, aliter Philosophi, tollunt astutias: leges quatenus manu tenere res possunt, Philosophi quatenus ratione & intelligentia*: euen so may I truly asseure, that (in the matter of Peace) the Lawe of God (which onely is the true Philosophy) respecteth the mind and conscience, although the lawes of men doe looke but to the bodie, hands and weapons.

Sometimes therefore, the word Peace is taken for Protection, or defence: as where M. Bracton calleth the Writs of Protection, *Breua de pace*: Sometimes (as it seemeth to me) it is taken for Rights, Priviledges, and

Peace, for Iu-
stices of the
Peace.

Liberties, as in the oath of the Queene at her Coronation, she sweareth, *Seruare Ecclesia Dei, Cleri, & populi, pacem ex integro*: the meaning whereof is, (as I suppose) that she will maintaine each degree and estate of her Subjects, as well Ecclesiasticall, as Temporall (for *Populus* there comprehendeth all the Laitie) according to their severall customes, Lawes, and Priviledges. And sometimes it is taken for a withholding (or abstinence) from that iniurious force and violence, whereof I spake before. And this is it that is most commonly understood by the word Peace, in our Law: and for the maintenance hereof chiefly, were these Wardeins & Iustices of the Peace first made and appointed.

For Iustices of the Peace were not ordained (as some haue thought) to the ende to reduce the people to an vniuersall vnaminitie (or agreement of minds) which is in deede a thing rather to be wished for, then to be hoped after: Neither is it any part of their office, to forbid lawfull suites and controuersies (which neuertheless be disagreements of minds) but to suppress the iniurious force and violence, moued against the person, his goods, or possessions.

And, that this may appeare to be the minde of that King, which first created these Wardens, or Iustices of the Peace (I meane King Ed. the third) let me shew you the very Writ that

that he in the first yeare of his raigne, and not many weekes before the Parliament, in which the Gardeins of the Peace (who afterward obtained the name of Iustices of the Peace) were first ordained, did send to the Shiriffes of all the Shires in England, bearing this forme.

EDWARDVS, Dei gratia Rex Anglia, Tho. Walsingham in hist.
Dom. Hybernia, Dux Acquitania, Vicecomiti ham in hist.
Kanc. salutem. Quia Dom. Edwardus, nuper pag. 107.
Rex Angl. pater noster, de communi assensu prelatorum, Comitum, Baronum, & aliorum Magnatum, necnon Communitatum totius regni predicti, spontanea voluntate se amouit a regimine dicti regni, volens & concedens quod nos (tanquam ipsius primogenitus, & Hares ipsius) regni gubernationem & regimen assumamus: Nosq; ipsius patris beneplacito in hac parte de consilio & ausamento Prelatorum, Comitum, & Baronum predictorum annuentes, gubernacula suscepimus dicti regni, & fidelitates & homagia ipsorum Prelatorum & Magnatum recepimus, ut est moris: Desiderantes igitur pacem nostram pro quiete & tranquillitate populi nostri inuolabiliter obseruari, Tibi precipimus, quod statim (visis presentibus) per totam Balliuam tuam. Pacem nostram facias publice proclamari, vniuersis & singulis ex parte nostra inhibendo, sub pena & periculo exheredationis & amissionis vite & membrorum, ne quis dictam Pacem nostram refringere seu violare presumat: sed qui-
libet

libet actiones & quarelas absque violentia quacunque prosequatur, secundum leges & consuetudines regni nostri: Nos enim parati sumus, & semper erimus, omnibus & singulis conquerentibus, tam diuitibus quam pauperibus in Curijs nostris plenam iustitiam exhibere. Teste meipso, Calendas Februarij, die dominica, in vigilia Purificat. &c.

This Writ I haue the rather chosen to set downe at large, because it containeth a faire shew of a foule shift, I meane, his attaining to the crowne, by the depriuation of his owne father.

But (for the present purpose) by this Writ it is manifestly declared, that the Peace which he meant, was not an vniuing of mindes, but a restraining of hands: which is (in a manner) all one with that which Tullie writeth in his Oracion *Pro Sestio*, where he setteth *Vis* and *Inu* one against the other: and it agreeth well with that descriptiō and diuision of *Vis*, which M. Bracton maketh (*lib. 4. cap. 4.*) saying: *Vis est, quotiens quis (quod sibi deberi putat) non per Iudicem reposcit: Est autem interdum armata, interdum inermis.* According to which meaning also, the olde Statute of *Westminster* the first (*cap. 1.*) sayd: Let the peace of the land bee maintained in all points: and common right be done to all, as well poore, as riche: Thereupon likewise saith the Statute (*1. R. 2. cap.*

cap. 2.) Let the peace be well & surely kept, that the Kings subiects may safely go, come, and abide, according to the Lawe of the Realme: and that Iustice and right be indifferently ministred to euery Subiect.

Finally, the Statutes of 2.R. 2. cap. 4: 1.H. 4. cap. 1. and 7.H. 4. cap. 1. Do all (in playne speech) couple the maintenâce of the Peace, with the pursuing of suites, as things that may right well stand together. And therefore, I conclude, that this furious gesture, & beastly force of body, or handes (and not euerie contention, suite, and disagreement of mindes) is the proper subiect and matter, about which the Office of the Iustices of the Peace is to be exercised.

Howbeit I write not this, as though I would not haue a Iustice of the Peace to occupie himselfe also in pacifying the suites and controuersies, that do arise amongst his neighbours: Yea, rather I wish him to bee as well *ειρωνακον*, as *ειρωνακων*, a Compounder, as a Commissioner of the Peace: and I thinke him so much the meeter to stepp in betwixt those that be at variance, as (by reason of his learning, wisdom, authoritie, and wealth) he is like to preuaile more, by his mediation and intreatie, then is an other man. But yet, as it is not all one, to speake of his proper office in Lawe, and of his common duetie in Charitie:

Iustices of the Peace, be meete to pacifie suites.

Charitie: so I thought good for learning sake to seuer and distinguish them, in this Treatie.

Of such as had the *Conseruation*

of the Peace at the Common Law.

CAP. III.

AS the Common law hath, euen from the beginning, continued a speciall care for the Conseruation of this Peace: So did it not want meete Officers, (before that these Wardeins or Iustices of the Peace were made) to whose charge it did commit the maintenance of the same: And forasmuch as it will giue no small light to the vnderstanding of the office of the present Iustices of Peace, to haue that ancient authoritie vnsolded, vpon the which this latter power is (as it were vpon a Stocke) set and engrafted, I wil speake somewhat thereof, before I begin with the other.

Conseruators
of the Peace.

At the Common law therefore, and before the time of King Edward the third, there were sundry persons, that had interest in the keeping of the Peace. Of those, some had that charge as incident to other Offices which they did beare, & so included within the same, that they were neuerthelesse called by the names of their other Offices onely: Some others had it simply, as of it selfe, and were thereof

thereof named *Custodes pacis*, Wardeins, or Conseruators of the Peace.

Againe, of these that had charge ouer the Peace, by the dignitie of their Offices, some had that power ouer all the Realme, and some others had it within certaine limits only: and both these sortes after a diuers maner of dispensation, as in particularitie it shall appeare.

The Queenes Maiestie then, is (by hir Office and dignitie roiall) the principal Conseruator of the Peace within her Dominions, and may giue authoritie to others, to see the Peace kept, and to punish such as shall breake the same. But a Duke, Earle, or Baron, be no Conseruators of the Peace: because those be no titles of Office, but of dignitie onely, as saith Marrow.

The Lord Chauncellor (or Lord Keeper of the great Seale) the L. Steward of England, the L. Marshall and Conestable of England, and euerie Iustice of the Kings Bench, haue (closed in their offices) a credite for conseruation of the Peace ouer all the realme, and may alward Precepts, and take Recognisances for the Peace. Mar. and Fitz. And (by good opinion.) The L. Treasurer of England may well be added to the same number.

The Master of the Rolles also (by the iudgement of M. Mar.) is a generall Conseruator of the Peace by his office. But he maketh Pro-
celle

celle and taketh Recognuances therupon, not as incident to his office, but by prescription.

The Iustices of the Common place, & Barons of the Eschequer, be Conseruators within speciall places onely: that is to say, within the precincts of their seuerall Courts: So also the Iustices of Assises may award a man to prison that breaketh the Peace in their presence, and they may commaund the keeping of the Peace vnder a peine, and that weapons be taken from the Iurors or Witnessles, that appeare before them, if any complaint be thereupon made: But as they be meerlie Iustices of Assise, they can neither take Suertie of the Peace, nor award any Processe for it, Mar.

The Iustices of Gaole deliuerie, may take suertie for the Peace of a prisoner before them, that was committed for not finding suertie of the Peace, Mar.

The Coroners (saith Britton, Fol. 3.) be principall Conseruators of the Peace within their Counties: And euery Shirife is a Conseruator of the Peace, within his Countie: as Judge Fineux affirmed, 12.H.7.17. and after him M. Fitz. *Nat. Breu. Fo. 81.* where he sayth, that the Shirife may (vpon request made, and without any Writ sent vnto him) commaund a man to find such Suertie of the Peace by Recognuance.

The Steward of the Marshallsey, may take
Suertie

Suertie of the Peace, by Recognisance also within the Vierge, by prescription: and the Conestable Marshall of the Queenes house, may see to the Conseruation of the Peace within the same house. Mar.

The Steward of the Shirifes Turne, the Steward in a Lecte, or the Steward in a Court of Pipowders, can not graunt Suertie of the Peace, vnlesse it bee by Prescription. But euery of the, may commit him to Ward, that shall make an affray in their presence, whilst they be in execution of their offices: which is more then the Steward and Suitors in a court Baron can do, Marrow: but the first two of these, may also take presentment of any offence against the Peace.

To be short, euery Constable, Peticonstable, Tithingman, and Borowhead, be Conseruators of the Peace by their offices, within the limits of their Hundreds, Townes, Tithings, and Boroughs. 12.H.7. 17. Fineux. And by the same reason, our Borsholder in Kent, and their Thirdborow in Warwickshire, be Conseruatours also within their Boroughs. For Borowhead, Borsholder, and Tithingman, be three seueral names of one self same thing, and doe signifie, The chiefe man of the free pledges within that Borow, or Tithing. And where each third Borow only hath a Constable, there the officers of the other two Borowes,

rowes, be called Thirdborowes.

These Conestables were ordained (as it appeareth. 3. H. 4. 9 : & 10. H. 4. & Fitz. Fol. 172.) to keepe the Peace, and to repressle felons, and might take suertie of the Peace (by obligation) if they found any man making an affray, or other wise to commit him to prison til he should find such Suertie.

I haue read also, that a Constable might at the common lawe, haue bailed a suspect of felonie by Obligation, because he was a Conseruator of the Peace: and that both he and the Shirife lost this authoritie by the Statutes (3. H. 7. cap. 3 : & 1. & 2. Phil. & Mar. cap. 13.) The which, in giuing that power to Iustices of the Peace, do (in the opinion of some men) take it from the Shirife and Constable: reported by Dalison Iustice.

Simple conseruators.

Whitherto then, of such as had, and yet haue, the charge of the Peace conueied vnder their other Offices. Nowe, as touching those that had the simple Office of Wardeins (or Conseruators) of the Peace, it is to be vnderstood, that they also were of two diuers sortes : that is to say, either Ordinarie, or Extraordinarie : and the Ordinarie Conseruators, were either by Prescription, Election, or Tenure.

Ordinarie.

By prescription.

A man may prescribe (saith M. Marrowe) that he and his ancestors, or he and they whose estate he hath in the Manor of Dale, haue bene

Con-

Conseruatours within the Hundred of Sale, either all the yeare, or onely at one certaine time of the yeare: And as he may prescribe in the power it selfe, so also may he in the maner of the exercise of the same: as, that he and they haue vsed to take Suertie of Peace by obligation, pledge, or Caution: and so also in the maner of the Processe therefore, as to Distreigne, and to sell the distresse: Mar.

But all this is to bee doubted of, because that in the opinion of Brian and Pigot (21. E. 4.67: & 22.E.4.35.) the Maior of Dale cannot prescribe to be a Conseruator, or to command Suertie of the peace, or to commit to prison for an affraie in his presence vntil such suertie be found.

Furthermore, euen as the Shirifes were anciently cholen, and as the Coroners yet be: So also certaine persons were wont to be elected Conseruators of the Peace, in the full Countie before the Shirife: and of this kind I my selfe haue seene certaine Records (*in Rotul. patent. de Anno 5. E. 1.*) running in this course.

By Election.

First, a Writte to the Shirife of Norffolke, commanding him to choose in his full Countie, *unum hominem de probioribus & potentioribus Communitatis sui, in custodempacis.*

Then an other Writ directed, *Balliuis & fidelibus* of the same Countie, giuing vnto them
C. i. them

them notice of the former Writ, to the end (as it seemeth) that the Bailifes should warne the mē of the Countie, & that they should appeare at the Countie Court, to make the Election.

And lastly, to the Conseruator elected, this Writ following :

EDWARDVS Dei gratia Rex Anglia, Dominus Hybernæ, & dux Aquitania, dilecto & fideli suo, Iohanni le Bretun, Salutem: Cum vicecomes noster Norfolc. & communitas eiusdem commitatus elegerit vos in Custodem pacis nostræ ibidem: vobis mandamus, quod ad hoc diligenter intendatis, prout idem vicecomes vobis sciri faciet ex parte nostra, donec aliud inde praeceperimus. In cuius rei, &c. Datum per manum venerabilis patris. F. Bathon & Wellen. Episcopi, Cancellarij nostri, apud Cest. secundo die Septemb. Anno regni nostri quinto.

By Tenure.

Touching the Conseruation of the Peace by Tenure of Land: M. Marrow putteth this case: If the King graunt vnto a man, lands to hold of him by Knights seruice, and to bee a Conseruator of the Peace in a Countie, he is a Conseruator by Tenure: agreeably whereunto saith an Inquisition, found at Chester (An. 4. E. 2.) after the death of one Vrianus de Sancto Petro (*inter alia*) thus:

Quod idem Vrianus tenuit de Domino Rege in capite in dominico suo vt de feodo, die quo obiit, Medietatem Seriantia pacis, per seruiti-

um inueniendi, decem seruientes pacis ad Custodiam pacis in Cestr. pro qua quide custodia antecessores sui percipere solebant xxx. solidos, per annum ad Scaccarium Cestr. pro Mantellis dictorum decem seruientum, &c.

These sortes, and some others (which M. Marrow reciteth, and which I, wanting Records to warrant them, do omit) I call Ordinarie Conseruators of the Peace: because their authoritie was then Ordinarie, alwayes one, and the same well inough knowen: But the Extraordinarie Conseruator, as hee was indowed with an higher power, so was he not ordinarily appointed, but in the times of great troubles onely, much like as the Lieutenants of Shires are now in our dayes.

And he had the charge to defend the coasts and Countrey, both from foraine and inward enemies, and might commaund the Shirife and all the Shire, to aide and assist him: as it may well appeare by this Patent (remaining of Record in the Tower, *Rotul. Patent. de An. 49. H. 3.*) made by that King, or rather in his name, by Simon the Earle of Leicester, whose prisoner he then was.

R*Ex Iohanni de Plessset, salutem: Cum nuper de consilio Magnatum qui sunt de consilio nostro, constituerimus vos custodem pacis nostre in comitatu Northumb. ac vos tam laudabiliter & circumspecte in officio illo gesseritis,*

G. ij. quod

Extraordina-
rie Conser-
uators.

quod probitatem ac diligentiam vestram merito
duximus recommendandam, & adhuc necesse sit
(sicut intelleximus) quod ad tuitionem partium
illarum & conseruationem pacis nostre, eidem
officio intendatis: vobis (de consilio Magnatum
predictorum) mandamus, firmiter iniungentes,
quatenus omnem diligentiam (quam poteritis)
adhibeatis ad pacem nostram conseruandam in
partibus predictis, in forma qua vobis aliàs in-
iunximus. Mandauimus enim Vic: nostro Nor-
thumb. quod quotiens opus fuerit, & a vobis fu-
erit requisitus, cum toto posse sui committatus:
vobis ad hoc assistat. Nolumus autem, quod pre-
textu huius mandati nostri, de aliquibus (qua ad
officium vic: pertinent) vos intromittatis, quo-
minus vic: de exitibus eiusdem commit. nobis
plene respondere valeat ad Scaccarium nostrum.
Teste Rege, apud Westmonast. xi. die Februarij,
Anno regni sui quadragesimo nono.

And sundrie the like Patentes were at the
same time also made: as to Iohn de la Haye,
to bee Conseruator of Kent, and of the
Sea coastes there: to Ralph Bassett
of Draiton, to be Conseruator
of Staffordshire: and so
to others, for other
Counties.

Of the first ordaining of the

Wardens & Iustices of the Peace,
by Statute Law.

CAP. IIII.



After such time as Queene Isabell (contending with her husband, King Edward the second) was returned ouer the Seas into England, accompanied with hir sonne Prince Edward (called after ward the third King of that name) and with Sir Roger Mortimer, & such others of the English Nobilitie, as had for the indignation of the King, fled ouer the Seas vnto her: She soone after got into hir hands the person of the old King, partly, by the assistance of the Henalders, that she brought with her, and partly by the aide of such other her friends, as she found ready here: and shee immediately caused him by forced patience to surrender his Crowne to the yong Prince. And then also, forasmuch as it was (not without cause) feared, that some attempt would bee made to rescue the imprisoned King: order was taken, that he should be conueied (secretly, and by night watches) fro house to house, and from Castle to Castle, to the ende that his fauourers should bee ignoraunt what was become of him. Yea, and then withall, it was ordained by Parliament, in the life time of that

C. iii.

deposed

deposed King, and in the very first entrie of his sonnes raigne (1. E. 3. cap. 15.) That in euery Shire of the Realme, good men and lawfull (which were no maintainers of euill, nor Baretours, in the Countrey) should bee assigned, to keepe the peace: which was as much to say, that in euery Shire, the King himselfe should place speciall eyes and watches ouer the common people, that should bee both willing and wise to foresee, and be also enabled with meete authoritie to repress, all intention of vyrgere and force, euen in the first seede thereof, and before that it should growe by to any offer of daunger. So that, for this cause (as I thinke) the election of the simple Conseruators (or Wardeins) of the Peace, was first taken from the people, and translated to the Assignment of the King.

And whether their authoritie and power were then also with this alteration any thing increased, or no, I wil not affirme: But I find (3. E. 3. tit. Coron. Fitzh. 360.) that an Enditement of murder was founde before one Wardein of the Peace only, and that he thereupon wrote his letter (or precept) to the Shirefe, to apprehend the person endited, who toke and brought him before the Iustices in Eire: and that they also thereupon proceeded to the arraignment and triall of him.

And the Statute (4. E. 3. cap. 2.) taketh order,

der, that such as should be indited, or taken by the Wardeins of the Peace, should not be bailed by the Shirife, or other Ministers, vntlesse they were Mainpernable by the Law.

Howsoever that were, the same King vsed (as I thinke) for the first 33. yeares of his raigne, to make his assignments and commissions to the Wardeins of the Peace, not alwayes seuerally into each Shire, but sometimes iointly to sundry persons ouer sundrie Shires: for so I finde a Commission (2. E. 3. part. 2. patent in dorso) made to William Roos and three others his companions, to be Wardeins of the Peace, not onely in *Lincolnshire*, but also in three, or foure, of the other Counties thereunto next adioynning.

Commissi-
ons, or assign-
ments, for the
Peace.

This, though it might seeme to be warranted (after 18. E. 3.) vpon the Construction of the word Counties, vsed Plurally in the Statute, 18. E. 3. Stat. 2. cap. 2: yet was it much contrary to the meaning of the former lawes (made 1. E. 3. cap. 15: & 4. E. 3. ca. 2.) where the same word is read (Euerie Countie) in the singular number. And therefore the Parliament (34. E. 3. cap. 1.) restored the proper sense of those lawes, saying: In euerie Countie of *England* there shall be assigned for the safe keeping of the Peace, one Lorde, and with him, three or foure of the mightiest men in that Countie. And afterwarde it ad-

deth, They shall haue power to heare and determine (at the Kings suite) all maner of Felonies and Trespasses, done in the same Countie.

And hereof it commeth to passe, that euer since each Countie hath hir proper Commissioners for the Peace, and that Counties haue not bene conioyned in Commission, as they were sometimes before. Hereunto also may that be referred, which M. Fitzh. (Fol. 171.) hath, saying, That before the Statutes which ordained Iustices of the Peace, the King vsed to make Conseruators of the Peace by his commission, in those Counties and places, where he thought best, to keepe his Peace.

The first
name of Iu-
stices of the
Peace.

But now, at what time these Wardeins of the Peace, were first named (and might truly be termed) Iustices of the Peace, it is not so euident, that I dare determine vpon it. For, on the one side I knowe, that M. Marrow taketh it cleare, that they were made Iustices by the Statute 18.E.3. Sta.2. cap.2: and on the other side I set, that they were not named Iustices in any Statute (that I haue founde) within 17. yeares after.

There is a shewe (I confesse) in that Statute (18.E.3.) that they should be Iustices, because of their power to heare and determine felonies, which is mentioned there. But if it be well weighed, it will appeare by the Statute

tute it selfe, that the Wardeins of the Peace were to haue one Commission by themselves for the keeping of the Peace : and that they and others (onely at times needfull) were to haue another Commission to heare and determine Felonies : So that, as they were merely Commissioners for the Peace, they had none authoritie to determine felonies : and consequently could not (in regard thereof) be then worthily called Iustices.

And it is plaine (in mine opinion) that the generall power of determining felonies, was first giuen vnto the Wardeins of the Peace (as to themselves) by the Statute 34. E. 3. cap. 1. After which time, it is very true that they were commonly reputed, and called Iustices.

For within one yeare after that time, there is a Commission, which I haue seene (*in dorso patentium parte 2.*) that speaketh thus, *Affirmamus etiam vos, & tres vestrum, Iusticiarios nostros, &c.* as it now is : and the Statute (36. E. 3. cap. 12.) taking order for the Quarter Sessions to be holden, as well by them, as by the Commissioners for Labourers, calleth them plainly, Iustices of the Peace, which is more then their owne Commission doeth asfoord to this present day.

I might here disclose, how, and by what degrees, the authoritie of these Iustices of the Peace,

Peace, was from time to time enlarged : But I will reserue that untill I shall come to the forme of their Commission, where I shall find, both more fit occasion, and more proper place, for it.

By whose authoritie, and by

what meanes, *Iustices* of the Peace
be appointed : and of what sortes
they bee.

CAP. V.

From the King (who is the head of Iustice) ought to flow all authoritie to the inferior and subalterne Iustices. And vpon this reason, it seemeth that the sayd Statutes (18. E. 3. cap. 2. and 34. E. 3. cap. 1.) did ordaine, that the Wardens of the Peace in each Countie should be assigned by the Kings Commission : to the end that it might thereby appeare, that they receiued their whole authoritie and power, as it were by his owne hand or deliuerie.

Howbeit afterward, partly through such as had *Inaregalia* within their Counties Palatine, and did thereby make Iustices of the Peace in their owne names : and partly by the meanes of sundry Abbats and Religious persons, who (labouring by all policie to increase their iurisdickions, and to shoale out them

themselves from the ordinarie gouvernement) had obtained graunts from the Kings of the Realme, that they themselves might make *Iusticiarios suos ad pacem conservandam* within their owne liberties, this prerogative of making Iustices was in many places afterward severed from the Crowne, to no small detriment of the royall estate and dignitie.

And therefore, although by the opinion of Judge Fineux in the Abbat of Saint Albans case (20.H.7.8.) such a graunt was of no value in law, because it was of a Prerogative inseparably annexed to the Crowne: yet King Henry the eight thought it fit (by a generall resumption in Parliament of all such liberties) to restore unto the Crowne his auncient right in this behalfe. Whereupon (27. H.8. ca.24.) it was decreed, that no person whatsoever, should haue any power to make Iustices of the Peace: but that they should be made by letters patents vnder the Kings great seale, in the name, and by the authoritie, of the King and his heires, Kings of the Realme, in all Shires, Counties Palatine, and other places within his dominions.

So that nowe againe, all Iustices of the Peace at this day (except the Archbishop of Yorke, and the Bishops of Durham and Elie, and their temporall Chancellours for the time being, which are severally by that very Parliament

Two sortes
of Iustices of
the Peace.

By graunt.

liament authorized to be Iustices of the Peace, within the libertie of *Hexham*, the Bishoprike of *Durham*, and the Ile of *Elie*: and except the Iustices of Peace, within the Countie Palatine of *Lancaster*, which also are by prouision in the same Statute to bee made vnder the Kings vsuall seale of the same Duchie) all others I say, be ordained by the meane of the great Seale, and by the ministerie of the L. Chauncellor hauing the charge of the same: but yet so, that some of them be made by Letters Patents vpon special sute to the Queene, and by her bill assigned: and other some by Commission of Common Course, that respecteth in the dispensation of the L. Chancellor himselfe.

They of the first sort, be of some called Iudiciall Iustices, and Iustices of themselves: for that the Queene can not discharge them at her will and pleasure, because they are to continue, and to enioy Iurisdiction, so farre forth as their Patent of graunt doeth enable them. Mar.

And therefore, if the Queene do graunt vnto a man to be a Iustice of the Peace during his life within a certaine precinct, without any further words: he shall continue such a Iustice during his life: and shall haue all that power, that a Wardein or Conseruator of the Peace had: and perhaps such power also,

as

as is giuē to a Iustice of the Peace by expresse words in any Statute : but he shall not haue all that power, which is ordinarily giuen to the Commissioners of the Peace by their Commission. Mar.

The Maiors, and other head officers, of many Cities and corporate Townes, be Iustices of this kinde at this day, by grauntes of the Queene, and her progenitors.

Those other Iustices of the Peace, which By Commission. deriue their power from the Commission, be called Commissioners of the Peace: and doe differ from the other in this point specially, that they be Iustices during only the Queens life, and (in her life) during onely her owne will, and pleasure.

These (as I sayd) be now at this day appointed by the discretion of the Lord Chancellor: but whether the King himselfe did at the first nominate them (as he did those which were made by Graunt) or else did leaue the choise of them to the Lord Chauncellor alone, or to him and others, it hath some shew of question.

It is true, that in the Parliament holden at *Canterbury* 12.R.2. cap.2. (which happened shortly after that Michael de la Pole was remooued from that place, and after the troublesome Parliament of the eleuenth yeere of that kings raigne) It was enacted, that the Chancellor,

Commissioners of the Peace appointed by the Lord Chancellor.

cellor, Treasurer, and keeper of the priuie Seale, the Steward of the kings house, the kings Chamberlaine, the Clearke of the Rolles (nowe called Master of the Rolles) the Iustices of both Benches, the Barons of the Eschequer, and others that should bee called to the naming of the Iustices of the Peace, Shirifes, Escheators, Customers, Controullers, and other Officers, should be sworne to doe the same faithfully, and without affection. But, whether the meaning of that Statute were, that they all should be continually present together at the nomination of all such officers: and whether that Statute were made but for that busie time onely, it may wel be doubted. For againe, vpon fault found (as it should seeme) that the Commissioners of the Peace were made of persons insufficient, and dwelling in foireine Counties, it was enacted (2.H.5.Parl.2.ca.1.) that from thenceforth they should be assigned by the aduise of the Chancellor and of the kings Counsell: which wordes may bee taken to sound, as though they had bene named before by the Lord Chancellor alone: and yet, may they also indifferently be extended, either to adioine the aduise of the kings counsell to the Chancellor, or the aduise of them both vnto the king himselte.

This is out of all doubt, that 18.H.6.ca.11.

did

did take order, that (vpon knowledge giuen to the Chauncellor of England, by any appointed to be a Iustice of Peace, that he had not lands to the value of twentie pound by yeare) the Chauncellor himselte should put an other sufficient in his place. And for want of sufficient men, hauing lands of that value, learned in the Lawe, and of good gouernance, that the Chancellor of England, for the time being, should haue power, by his discretion to put into the Commission other discrete persons learned in the Law, though they had not lands to that value. And albeit this credite were here giuen vnto him in these particular cases onely, yet may it well bee thought, that hee had bene before, and should be afterward, trusted with the choice of all the Commissioners of the Peace generally: the rather also, for this presumption gathered vpon the Statute (3.E.6. cap.1.) which mentioneth, that the nomination of the *Custos Rotulorum* (being a very speciall Iustice of the Peace) had of long time before belonged to the Office of the Chauncellor: vntill that (vpon sinister occasion) it was taken from him by the Statute of 37.H.8.

cap.1. whereof you shall read more in the fourth Booke of this treatise.

What

What maner of men, the Commissioners of the Peace ought to be.

CAP. VI.

In the choice of the Wardeins and Iustices of the Peace, the Statute lawes haue respect to the maners, and abilitie (or liuelihood) of them all: and to the skill, and learning of such, as are specially selected, and therefore named of the *Quorum*. For, Gardeins of the Peace ought to be good men & lawfull: no maintainers of euil: nor Barretours in the Countrey: or (as some Bookes haue it) no maintainers of euill Barretours in the Countrey. 1.Ed.3.cap.15. Men of the best reputation (*Mentiz vailantz*) most substantiall (or of most valour) shall be assigned keepers of the Peace. 18.E.3.ca.2.& 17.R.2.cap.9. In eue-ry Countie, for safegard of the Peace shall be assigned one Lord, and with him three or foure of the (*Mieultes vanees*) most valiant men of the Countie, together with some Sages of the Lawes. 34.E.3.cap.1.

And, after some troubles in the time of K. Richard 2. it was enacted, that none shall bee made Iustice of the Peace, for any gift, brocage, fauour, or affection: nor any which sueth by himselfe or any other, priuile, or openly, to be a Iustice of the Peace, shal be admitted

mitted to that office. 12.R. 2.cap.2. And of some speciall pollicie it was then also provided, (cap. 10. of the same Parliament) that no Steward of any Lord should bee assigned in the Commission of the Peace. Howbeit in the Parliament of the next yeere (cap. 7.) it was ordered, that (notwithstanding that clause of the former Statute) Iustices of the Peace should then be made of new in all places, of the most sufficient Knights, Esquires, and men of Law.

Againe, Iustices of the Peace (especially those of the Quorum) from henceforth shal be made of the most sufficient persons, dwelling in the Countie (without taking any others dwelling in forraine Counties) except the Lords, Iustices of both Benches, Iustices of Assise, the chief Baron, the chief Stewards of the Duchie of *Lancaster*, the Scribeants, & the Kings Attourney. 2.H. 5. Parl. 2. cap. 1.

Lastly, for that (contrary to those former Statutes) men of small substance had crept into the Commission, whose pouertie made them both couetous and contemptible: a new Law was published, to this effect following:

None shal be assigned Iustice of the Peace, if he haue not lands or tenements to the value of twentie poundes by the yeere: And if any be otherwise appointed, he shall within a moneth after notice of the Commission

D. i.

(and

CAP. 7. 34 *The first Booke.* Who should be Iusti.
(and vnder the paine of twentie pounds, and
to be put out of the Commissiō) giue know-
ledge of his not hauing such landes or tene-
ments, to the Lord Chancellor, who shal put
another person sufficient in his place. And
the like paine is, if he sit, or make Warrant
or any Precept, by force of the Commission.
But this, extendeth not to cities, Boroughs,
or Townes that be Counties of themselues,
or that haue Iustices of Peace (dwelling in
them) by Commissiō or graunt of the King:
Nor to such Counties, where there bee not
men sufficient (hauing lands or tenements
to the value aforesayd) learned in the Law,
and of good gouernance: for then, other dis-
crete persons, (learned in the Law) may by
the Lord Chancellor be put in the Commis-
sion. 18.H.6.cap.11.

Nowe although this portion of twentie
pounds by yeere, be not at this day in account
answerable to the charge and countenance of
a fit Iustice of the Peace: yet, who knoweth
not, that at the making of this Lawe, it was
farre otherwise: And therefore, I do not doubt,
but as the rate of all things is greatly grow-
en since that time, so also there is good care
taken, that none be now placed in the Com-
mission, whose Liuinges bee not answerable
to the same proportion.

Thus then, our Parliaments (extending
to

to make the Iustice of Peace an able Iudge) doe require, that he come furnished with thre of the principall ornaments of a Iudge : that is to say, with Iustice, Wisdome, and Fortitude, for to that summe the wordes, Good, Learned, Valiant, do fully amount. And vnder the word Good, it is meant also that hee loue and feare God aright, without the which he cannot be Good at all.

How many Commissioners of
the Peace there ought to be in
each Countie.

CAP. VII.

THe number of the Wardeins of the peace was not limited, vntill that the Statute (18.E.3.ca.2.) ordained, that there should bee two, or thre, in each Countie : And because it was found, within a few yeares experience, that this number sufficed not for the gouernance of the Countrie, therefore by an Acte (made 34.E.3.cap.1.) it was further provided, that in euery Shire, one Lord, and with him thre (or foure) of the Best in the Countie, and some learned in the Lawes, should be assigned for keeping of the Peace, and to restraine offenders.

In execution of which Statute, there was
D. ii. (amongst

(amongst many other) which I haue seene, one Commissiō for *Kent*, awarded (35.E.3.) to these eight persons, Robert Herle, Iohn Cobham, Roger Northwood, Ralph Frenningham, Thomas Lodelow, Robert Vintar, Iohn Barry, and Thomas Hartrege.

But, as it falleth out many times, that euill examples doe follow of good lawes: So, here it came to passe, that whilst the Parliament prouided an increase of Officers to restraine offenders, ambition so multiplied the number of those Iustices, that it was afterward high time to make a contrary law to diminish them. And therefore, by the Statutes (12.R.2.cap. 10. and 14.R.2, cap. 11.) it was prohibited, that there should be any more then six Iustices of the Peace in any Commission, besides the two Iustices of Assise, and certaine Lords that were assigned in the Parliament it selfe. And, for the better restraint of the increase of them in time to come, it was also then further enacted, that no Association should be made to the Iustices of Peace, after their first Commission, 12.R. 2, cap. 10. Which law, although it be not abrogated till this day, yet was it long since eluded, by making of newe Commissions, that had more new Iustices thrust into them.

Very many
Iustices of
Peace at this
day.

And (truely) it seemeth to mee, that (together with the like ambitious desire of bearing rule

rule in some) the growing number of the Statute lawes, committed from time to time to the charge of the Iustices of the peace, hath bene the cause that they also are now againe increased to the ouerflowing of each Shire at this day.

For, if Husley (the chiefe Iustice 1. H. 7. Iustices of 3.) did thinke that it was inough to loade all the Iustices of the Peace of those dayes, with the execution, onely of the Statutes of *Winchester* and *Westminster*, for Robberies and Felonies: the Statute of Forcibles entries: the Statutes of Labourers, Vagabonds, Liueries, Maintenance, Embracerie, and Sherifes: Then, how many Iustices (thinke you) may nowe suffice (without breaking their backs) to beare so many, not Loades, but Stackes of Statutes, that haue since that time bene laid vpon them?

To dispute, whether it bee now better to haue many, or fewe Iustices of the Peace, in each Shire, is a noble question, and woorthie of a higher consideration:
and therefore it becommeth
not me to enter in-
to it.

The Forme of the reformed Commission of the Peace.

CAP. VIII.

COnsidering that all the authoritie and power of these Commissioners of the Peace, floweth out of their Commission, and out of the Statutes (as it were from two principall Heads, or Fountains) the place now requireth, first, that we unfold the Commission it selfe, and consider what is contained therein: then afterwards, that wee peruse the Statutes also, as they shall arise and shew themselves.

The Salutation.

ELIZABETH, Dei gratia Angliae, Franciae, & Hyberniae Regina, fidei defensor, &c. Prædilecto & fidei, Ioanni Cantuar. Archiepiscopo, &c. Necnon prædilectis Christophoro Hatton Militi, Domino Cancellario, Willihelmo Domino Burghley, Thesaurario, &c. salutem.

The power of
the Iustices.
The 1. Clause.

SCIATIS, quòd assignamus vos, coniunctim & diuisim, & quemlibet vestrum, Iusticiarios nostros, ad pacem nostram in comitatu nostro Kancie conseruandam: Ac ad omnia Ordinationes & statuta, pro bono pacis nostrae, ac pro conseruatione eiusdem, & pro quieto Regimine & gubernatione populi nostri edita, in omnibus & singulis suis Articulis, in dicto comitatu nostro (tam infra libertates, quàm extra) iuxta
viam,

*vim, formam, & effectum eorundem, custodien-
dum, & custodiri faciendum: Et ad omnes con-
tra formam Ordinationum, vel Statutorum illo-
rum, aut eorum alicuius in comitatu prædicto de-
linquentes, castigandum & puniendum, prout se-
cundum formam Ordinationum & Statutorum
illorum fuerit faciendum: Et ad omnes illos, qui
alicui, vel aliquibus de populo nostro, de corpori-
bus suis, vel de incendio domorum suarum, minas
fecerint, ad sufficientem securitatem de pace, vel
bono gestu suo, erga nos, & populum nostrum in-
ueniendam, coram vobis, seu aliquo vestrum, ve-
nire faciendum: & (si huiusmodi securitatem
inuenire recusauerint) tunc eos in prisonis nostris
(quousq; huiusmodi securitatem innenerint) sal-
uo custodiri faciendum.*

*Assignauimus etiam vos & quoslibet duos, The 3. Clause.
vel plures vestrum (Quorum aliquem vestrum
A. B. C. E. F. &c. vnum esse volumus) Iustici-
arios nostros, ad Inquirendum per Sacramentum
proborum & legalium hominū de comitatu præ-
dicto (per quos rei veritas melius sciri poterit)
de omnibus, & omnimodis felonij, beneficijs, in-
cantationibus, sortilegijs, arte magica, transgres-
sionibus, forstallarijs, regratarijs, Ingrossarijs, &
Extorcionibus quibuscunq;: Ac de omnibus &
singulis alijs malefactis & offensis (de quibus
Iusticiarij pacis nostra legitime inquirere pos-
sunt, aut debent) per quoscunq;, & qualitercunq;
in comitatu prædicto factis, sine perpetratis, vel
qua*

que impostherum ibidem fieri, vel attemptari contigerint : Ac etiam de omnibus illis qui in comitatu predicto in conuenticulis contra pacem nostram in perturbationem populi nostri, seu vi armata ierunt, vel equitauerunt, seu impostherum ire, vel equitare præsumpserint : Ac etiam de omnibus hijs qui ibide ad gentem nostram mahemandam, vel interficiendam in insidijs iacuerunt, vel impostherum iacere præsumpserint : Ac etiam de hostellarijs, & alijs omnibus & singulis personis, qui in abusu ponderum, vel mensurarū, siue in venditione victualium, contra formam Ordinationum, vel Statutorum, vel eorum alicuius, inde pro cōmuni utilitate regni nostri Anglia, & populi nostri eiusdem editorum, deliquerunt, vel attemptauerunt, seu impostherum delinquere, vel attemptare præsumpserint in cōmitatu predicto : Ac etiam de quibuscunq, vicecomitibus, Balliuis, Seneschallis, Constabularijs, Custodibus Gaolarum, & alijs officiarijs, qui in executione officiorum suorum (circa pramissa, seu eorum aliqua) indebitē se habuerunt, aut impostherum indebitē se habere præsumpserint, aut tepidi, remissi, vel negligentes fuerunt, aut impostherum fore contigerit in comitatu predicto : Et de omnibus & singulis articulis, & circumstantijs, & alijs rebus quibuscunq, per quoscunq, & qualitercunq, in comitatu predicto factis, siue perpetratis, vel qua impostherum ibidem fieri, vel attemptari contigerit, qualitercunq, pramissorum, vel

vel eorum alicuius, concernentibus plenius veritatem. Et ad Indictamenta quacumq, sic coram vobis, seu aliquibus vestrum, capta, siue capienda, aut coram alijs nuper Iusticiarijs pacis in comitatu predicto facta, siue capta (& nondum terminata) inspiciendum, ac ad processus inde versus omnes & singulos sic indictatos, vel quos coram vobis imposterum indictari contigerit (quousque capiantur, reddant se, vel vitagentur) faciendum, & continuandum. Et ad omnia & singula felonias, veneficia, incantationes, sortilegia, Artes Magicas, transgressiones, forstallarias, regratarias, ingrossarias, extorciones, conuenticula, indictamenta predicta, ceteraq, omnia & singula premissa, secundum leges & statuta regni nostri Anglia (prout in huiusmodi casu fieri consuevit aut debuit) Audiendum, & Terminandum: Et ad eosdem delinquentes, & quemlibet eorum, pro delictis suis, per fines, redemptiones, amerciamenta, forissacturas, ac alio modo (prout secundum legem, & consuetudinem regni nostri Anglia, aut formam Ordinationum, vel statutorum predictorum, fieri consuevit, aut debuit) castigandum, & puniendum.

Proniso semper, quod si casus difficultatis super determinatione aliquorum premissorum coram vobis, vel aliquibus duobus, vel pluribus vestrum euenire contigerit: Tunc ad Iudicium inde reddendum (nisi in presentia unius Iusticiariorum nostrorum, de vno, vel de altero Banco, aut

Exceptions or
restraint.

aut unius Iusticiariorum nostrorum ad Assisas in comitatu predicto capiendas assignatorum) coram vobis, vel aliquibus duobus, vel pluribus vestrum, minime procedatur.

The charge to the Iustices.

Et ideo vobis, & cuilibet vestrum mandamus, quod circa custodiam pacis, ordinationum, statutorum, & omnium & singulorum ceterorum premissorum, diligenter intendatis: Et ad certos dies, & loca, que vos, vel aliqui huiusmodi duo, vel plures vestrum (ut predictum est) ad hoc prouideritis, super premissis faciatis Inquisitiones, & premissa omnia & singula audiat & Termineis, ac ea faciatis, & expleatis in forma predicta facturi inde quod ad Iusticiam pertinet secundum legem, & consuetudinem regni nostri Anglia: Saluis nobis amerciamentis, & alijs ad nos inde spectantibus.

To the Shirife.

Mandamus enim tenore presentium vicecomiti nostro Kancie, quod ad certos dies & loca (que vos, vel aliqui huiusmodi duo, vel plures vestrum ut predictum est, ei ut predictum est scire feceritis) venire faciat coram vobis vel huiusmodi duobus, vel pluribus vestrum (ut dictum est) tot & tales probos & legales homines de Ballina sua (tam infra libertates, quam extra) per quos rei veritas in premissis melius sciri poterit & inquiri.

To the Custos Rotulorum.

Assignauimus denique te prefatum Henricum Cobham Militem, custodem Rotulorum pacis nostra in dicto comitatu nostro: Ac propte-

reatu, addies & loca prædicta, Breuia, Præcepta, Processus, & Indictamenta prædicta, coram te, & dictis socijs tuis, venire facias, ut ea inspiciantur, & debito fine Terminentur, sicut prædictum est.

In cuius rei testimonium, &c.

Datum die Nonembris, Anno regni nostri tricesimo tertio.

**A Short Explication of the present
Commission, & a Conference there-
of with the Former.**

CAP. IX.

INASMUCH as in this reformation of the Commission, care was taken, that the mostie matter of the former Commission being tried out (by the fire of learning and discretion) the body and countenance thereof should (as much as might be) remaine, and be let to stand: it commeth to passe, that the chiefe parts hereof be yet the very same that they were before, and are comprehended within these few termes following.

- The {
1 Salutation of the Queene.
2 Power of these Iustices.
3 Charge giuen to them & to others.

The 3. partes
of the Com-
mission.

The Salutation of the Queene is but a Catalogue of all the names of the Iustices, and containeth nothing that hath need of light.

Next followeth the power of the Iustices, contained in two seuerall Clauses, whereof the former

former beginneth thus: *Sciatis quod assignauimus vos, coniunctim & diuisim, & quemlibet vestrum, Iusticiarios nostros, ad pacē nostrā, &c.*

The latter beginneth at the ende of the former, thus: *Assignauimus etiam vos, & quoslibet duos, vel plures vestrum (Quorum aliquem vestrum, &c. vnum esse volumus) Iusticiarios nostros, ad Inquirendum, &c.*

The 1. clause.
Both Conseruators, and Iustices: for the Peace, and the Statutes.

This first Clause (or *Assignauimus*) maketh them Iustices for the conseruation of her Maiesties Peace: by force of which wordes, they haue singularlie, duallie, and plurallie, both all that auncient power touching the Peace, which the Conseruators of y^e Peace had by the common Lawe: and also that whole authoritie which the Statutes haue liethens added thereunto. For the more euident declaration whereof, they are immediately after assigned to conserue *Omnia ordinationes & statuta pro bono pacis, &c.* in which generall words there do lie implied, not onely the seuerall Statutes of Westminster, 1. cap. 9. 13. E. 1. cap. 8. & 28. E. 3. cap. 11. for Huie and Crie after Felons: and that of Westminster (5. E. 3. cap. 14.) against Night-walkers, that bee suspected: but also whatsoeuer other lawes and statutes made, either for the arresting of Robbers, Murderers, Felons, and of those that be suspected to be such: Or for the repressing of Riots, Affraies, Force, and violence (which bee directly agaynst the Peace,

Peace, as all men doe know) or for the hauing of Armour and weapon, which tend principally to the keeping of the Peace, as the Statute of Winchester it selfe doth acknowledge.

And therefore, there was no more necessitie to recite any of them by name in the Commission, then to make tedious rehersall of all those other statutes, which (giuing expresse authoritie to the Iustices of the Peace) do containe a sufficient Warrant and ample Commission within themselves.

But, euen as the conseruation of the Peace, Two meanes and the execution of these statutes bee seuerall to conserue.

things: So is there in this first Branch (or Clause) two distinct wayes (or meanes) for the effecting of the same. For, the Statutes are to Statutes.

bee performed according to such prescript and order, as themselves doe deliuer: wherein if no power at all bee expressely giuen to any one Iustice of the Peace alone, then can bee not otherwise compell the obseruation thereof, (so farre as I can darre) then by Admonition onely, and calling vpon the parties: in which behalfe, if he shall not bee obeyed accordingly, he is to preferre the cause at the Sessions, and to worke it to a presentment vpon the Statute, and so (by the helpe of his fellow Iustices) to heare and determine thereof, as law requireth. But, for preuention of the breach of the Peace, he hath full authoritie hereby, not onely to call the

Suertie of the Peace.

the partie for the finding of Suerties for the Peace, or for the good behauour, as the case shal require, but also (for not finding such Suerties) to commit him to safe custodie within her Maiesties gaole or prison.

Liberties.

Lastly, for the closing vp of this first clause, it is to bee remembred, that all this authoritie is to be exercised, *In Comitatu predicto, tam infra libertates, quam extra*, in the sayd Countie, as well within the liberties, as without. But yet so, as the distinction of Liberties bee not neglected. For, as in many other Shires, so in Kent also, there bee some Cities or Townes that be Counties of themselves, hauing their proper Iustices within them: And some others there be, which hauing their proper Iustices, be not yet any Counties of themselves at all, though happily they haue in their Charter speciall words of prohibition, that the Iustices of the Shire at large, *Non se intromittant, &c.* of that former sort is the Citie of Canterburie with vs, and of this latter sort is the Citie of Rochester.

Whereupon it followeth, that a Iustice of the Peace in Kent, of the Shire at large, hath no more authoritie by this Commission, within the liberties of the Citie of Canterbury, then he hath within the Shire of Suffex: because that Citie is not *In Comitatu Kancie*, but is a distinct Countie from it, even as Suffex is.

Now

Howbeit, some thinke y^e there is not the same but an other maner of impedimēt for a Iustice of the Shire at large, to do the partes of his office within y^e Citie of Rochester: because that is no County of it self, but is in *Comitatu Kentie*, as other cōmon Townes are. Only there is a restraint in the Charter of that Citie, that such a foraine Iustice shall not intermeddle there within that libertie: the which if he shall (notwithstanding such inhibition) attempt to doe, hee transgresseth not the boundes of his owne Commission thereby, but breaketh into their liberties against that Prohibition: & consequently it seemed to some (20. H. 7. 6.) that his acte is not meerely boide of all authoritie (because it is the service of the Queene, which alwaies carieth *Non omittas propter aliquam libertatem*, in it) but he himselfe is subiect to such punishment, as belongeth to that his temeritie, and vndiscreet action.

The latter Clause (or *Assignamus*) of the reformed Commission, comprehendeth the power giuen to these Iustices, as well for to enquire of all those offences that be contained therein, as to proceed, heare and determine thereof, vpon any former (or future) endite-ments: So alwaies, that two of these Iustices at the least bee present thereat, and so that the one of those two be of that select number, which is commonly termed of the *Quorums*. For these

The 2. clause.

Enquire, proceed, heare, and determine.

of

The *Quorum*.

of the *Quorum* were woont (and that not without iust cause) to be chosen, specially for their knowledge in the Lawes of the land: and that was it which led the makers of the Statutes (18.E.3.ca.2: 34.E.3.ca.1: & 13.R.2.ca.7.) expressly to enact, that some learned in the lawes should bee put into the Commission of the Peace: and (to say the trueth) all Statutes, that desire the presence of the *Quorum*, doe secretly signifie such a learned man. For, albeit that a discret person (not conuersant in the studie of the lawes) may sufficiently follow sundry particular directions concerning this seruice of the Peace: yet when the proceeding must be by way of presentment vpon the euidence of witnesses and othes of Iurozs, and by the order of hearing and determining according to the streight rule & course of the Law, it must be confessed, that learning in the lawes is so necessarie a light, as without the which all the labour is but groping in the darke, the end whereof must needs be error, and dangerous falling.

The Branch
for punish-
ment.

This clause giueth speciall authoritie also, both for the punishment of offenders, and for the correction of such officers as shall be found remisse: the which was suffred to remaine, not as of any necessitie at all (seeing that the punishment of all offenders is implied in þ word determining, and considering that it is incident
to

to euery court of Record, to do correction vpon whatsoeuer officers & ministers that do serue them) but ouely for the plaine declaration of the power of these Iustices in that behalfe, and for the moze assured terrifyng of such as shall (either of contempt, or negligence) doe that which is amisse,

And here, least these Iustices should rather ground their iudgements vpon the number of voices, then vpon the weight of reasons, this latter clause is shut vp with a prouision, and restraint, that in all cases of ambiguitie and doubt, they shall spare to proceed to iudgement, and shall expect the aduise either of some one of the Iudges of the Kings Bench, or of the Common place, or (at the least) of the one of the Iustices of Assise in that Countie, which be their moze neare and readie Oracle. And yet (as M. Fitch, fol. 7. well noteth) is not their iudgement void, if they lust to proceed without such aduice; but it standeth good & effectuell, vntill it shall be reuerfed by a writ of Error.

The power of these Iustices hath thus appeared: now therfore let vs heare the commandement and charge that is giuen to them, and the others.

If first therfore, these Iustices, and euery of them, be charged to be diligently intendant about the execution of all and singular the premisses, by these words, *Et ideo vobis, & c.*

bet vestrum, mandamus, &c. in the end whereof, there lieth a plaine Sauing to the Queene, of all such amerciements and other things, as shall grow due vnto her by their seruice in this Commission: of which point I will say more, in place more conuenient for it.

To the Shiriffe.

Then is the Shiriffe of the Countie commanded to be attendant vpon these Iustices for the returne of Iuries to be made befoze them, by these words, *Mandamus enim tenore presentium vicecomiti nostro Kancia, &c.* And

To the Custos Rotulorum.

lastly, the *Custos Rotulorum* (being one of these Iustices) hath moreouer speciall charge by himselfe, in right of this Office, to produce the Records of the peace, to the end that they may be both perused, directed, and proceeded vpon: all which matter lieth in the words, *Assignamus denique te prefatum Henricum Cobham militem, Custodem Rotulorum pacis nostre, &c.*

The conference of the olde and new Commission.

These parts of the Commission being thus shortly explained, let vs with like breuitie perforce the conference of it with the former.

I. Clause.

Whereas the former Commission stood thus in the first clause, (or *Assignamus*) thereof, *Sciatis quod assignamus vos, coniunctim & diuisim ad pacem, &c.* this newly reformed Commission saith, *Sciatis quod assignamus vos, coniunctim, & diuisim, & quemlibet vestrum Iusticiarios nostros ad pacem, &c.* by which words, *quemlibet vestrum*, it remoueth

ueth that scruple, which made some men to doubt whether one Justice alone were inabled by the words of the former Commission being onely *vos conuictum & damnatum*, the which do sound plurally, and must be of two at the least: & by the words *Iusticiarios nostros*, these Commissioners are termed after their true and proper name, not Wardens of the peace (as they were when the Commission of the peace was first deuised) but Iustices, as the statute 36. E. 3. and all the ensuing lawes doe plainly call them.

This new Commission pretermitteth (in the first clause) all that particular rehearsall of statutes which was wont to be read in the older: some of them (as Winton and Westminster) because they doe plainly concerne the conseruation of the peace, and are therefore sufficiently comprehended vnder the words *Statuta pro bono pacis*: others of them (as that of Northampton for Armour, & that other at Westminster of Hunters) because they giue to these Iustices sufficient Commission within theselues: others of them (as that of Cambridge for labourers, and that of H. 5. against washing and clipping of money) because they were long since repealed, the one by 1. *Maria*, and the other by 5. *Elizabeth*: and the rest of them, (that is to say, those of Liueries) because they haue nothing in them, the execution whereof

is committed to the power of any one Iustice. The which repealed Statutes, as also these words (*per quos rei veritas melius sciri poterit*) being most impertinently inserted, did make a foule blemish and deformitie in that first clause of the former Commission.

Furthermoze, whereas that part of the statute (3. H. 5. cap. 7.) which concerneth the counterfeiting of mony was not repealed by the act of repeale 1. Maria as the other parts thereof be, that do concerne the clipping, washing and filing of money: so as by vertue of the former Commission of the peace, these Iustices might not only haue inquired of such counterfeiting, but might also haue awarded proesse (by *Capias* only) against such as were thereof indited before themselves: yet now in this newly reformed Commission, that power against the Counterfeiters of money is purposely left out & omitted: and that with no lesse reason, then the makers of the statute 5. El. ca. 11. (by which the clipping, washing, rounding, and filing of mony is made treason as it was before) did not restore to the Iustices of peace, that authoritie therein, which the same statute 3. H. 5. had before yeelded vnto them ouer the selfe same offences.

Lastly, the words that were in the former Commission coupled thus together, *ad sufficientem securitatem de pace & bonogestu, &c.* be
now

now for good cause disioyned and left asunder thus, *ad sufficientem securitatem de pace, vel bono gestu, &c.* to the end that the Iustice of the peace may safely take the one or the other, as the cause in his discretion shall require: the which peradventure the Copulative in the first Commission would not permit him to do.

And these be the materiall points that be corrected in this first clause, or *Assignamus*: the residue of the change there, being for forme only, and to make things coherent & answerable to the present matter and substance.

The 2. clause in the olde Commission, is ^{2. clause.} not now any distinct member in the new: but is conioyned to that which is the second heere. If or whereas it stood altogether in bestowing the power of Inquirie vpon any two Iustices, that power is now adioyned to the iurisdiction of hearing and determining: so as whatsoeuer Iustices may by the new Commission inquire of any offences, they also may heare and determine of the same: and not without good reason are they so matched: seeing that there is no lesse vse of learning, for the charging and directing of a Iurie, that shall inquire of an offence by due order of the law, then there is for the hearing and determining it selfe. And therefore, both the one and the other doe now require the presence of one Iustice of the Quorum at the least: which is so farre from being any impe-

diment to the seruice at this day, (whē as in eche Commission of the peace, cōmonly two parts of thre be named of the *Quorum*,) that it is rather a good furtherance and helpe therunto by this continuall association of some one of those that be (or ought to be) of the more worthy sort of the Commissioners.

To come therefore to the 2. clause of this reformed Commission (which ioyneth together as I said the power of inquirie, hearing, and determining) we are to see, first, that the power of these Iustices is somewhat amplified, by addition of all the degrees in the offences of witchcraft, sorcerie, inchantmēt, or charming, whereas the same was before time to be dealt withall by these Iustices, onely in the point of Felonie, and not otherwise.

Then, is that absurd repetition of the abrogated statutes of Labourers, &c. woorthily omitted here, together with the needlesse rehearsall of the statutes of Liuries: because these Iustices are now plainly inabled by this Commission to inquire, heare, and determine generally of al maner of offences wherof Iustices of the peace lawfully may or ought to inquire,

And wheras the words of the former Commission did reach to punish the remisnesse of Maiors, Shirifs, &c. touching onely those few statutes that be namely rehearsed there: the same power is now extended generally to the punishment

punishment of them for their negligence concerning any the lawes or statutes wherein these Iustices haue iurisdiction.

Againe, whereas in the olde clause touching former indictments, there was an untoward enumeration of indictments taken in the time of King E. the 4. (not dangerous to any man that was indicted 130 yeres agoe) & so downward, by naming all the succeeding Kings and Queenes : that also is now corrected by these few words, *Aut coram alijs nuper Iusticiarijs pacis, &c.* The like fault is also auoided here, in the beginning of this second clause concerning the power of these Iustices, where it is said, *Assignanimus etiam vos, & quoslibet duos, vel plures vestrum, Quorum, &c.* whereas the 3. clause of the former Commission did most tediously deliuer it thus, *Assignanimus etiam vos, 79. 78. 77. 76. &c. 4. 3. & 2. vestrum, Quorum, &c.*

Furthermore, whereas in the other forme of Commission, the offences of Forstalling were to be heard at the sute of the Queene onlie, and the offences of Regrating at the sute of the Queene and partie : this present forme leaueth the sute generally, in all cases to the order of the Law and the Statutes, without any such unkinde diuorcement.

And lastly, this Commission restraineth the proceeding of these Iustices to iudgement in a

Difficultie.

ny case of difficultie whatsoeuer, according to that equitie, which M. Fits (fol. 7.) requireth: whereas by the former Commission they were not stayed, but in the case of extortion alone.

Sundry other amendements there be also within this second clause, but for as much as they sound more of forme, then of matter, I leaue them to the consideration of the reader himselfe, and will proceed to the charge of the Shiriffe, and of the Custos Rotulorum.

Shiriffe,

Writ of attendance.

The ancient forme was thus, *Mandamus enim vicecomiti nostro Kancia, &c.* whereby it was meant, that a speciall writ of attendance was awarded to the Shiriffe as the maner in deed sometime was to accompany the Commission of the peace, with such a seuerall writ: But now the present words be, *Mandamus enim tenore presentium vicecomiti nostro Kancia, &c.* the which do containe a sufficient writ of attendance within themselves, and haue no need of any other seale.

Custos Rotulorum.

Finally, albeit al the statutes that do speake of the Custos Rotulorū since the first making of him (which was in the reigne of King R. 2) doe namely call him Custos Rotulorum: yet neuer did any Commission of the peace (before this reformation) so terme him: and therefore seeing it is no lesse behoouefull to call him by the proper name of his office, then it was to call these Commissioners Iustices of the peace,
he

he is now charged thus, *Assignamus denique te prefatum Henricum Cobham, &c.* Of whose office and authoritie somewhat shal likewise be said in particular, when we come to the fourth Booke of this volume.

Of the two oathes, ministred to
the Iustices of the peace.

CAP. X.

Such as do occupie Iudiciall places, The causes
ought to take heede what they doe: why Iustices
knowing (as Iehosaphat said) that ^{be sworne.} they exercise not the iudgements of
Men onely, but of God himselte: whose power as they doe participate, so he also is present on the Bench with them. And therefore, it hath bene alwayes the policie of christian Lawes, to appoint meete formes of Religious attestations (or Oaths) for such Officers to take: meaning thereby, not only to set GOD continually before their eies (whome by such Oath, they take to witnesse of their promise, and call for reuenge of their falshood) but also to threaten them (as it were) with temporall paines provided against corrupt dealings: and withall to strengthen their mindes, and arme their courages, against the force of humane affections, which otherwise might allure and draw them out of the way.

Upon this ground, the Statute (13. R. 2.
Stat.

Stat. 1. c. 7.) which willed, that Iustices of the Peace should be made of new in all the Counties of England, did there withall take order, that they should be sworne, to keepe, and put in execution, all the Statutes touching their office: which, albeit that it bee the first Oath that I find to haue bene ministred to Iustices of the Peace, yet I thinke they were neither but sworne before, nor at any time after, as may be collected vpon the bookes 21. E. 4. 67: & 12. E. 4. 18: I beleue also, that y^e same maner of Oath was deuised but for that time onely, and continued not long in that forme, as being of it selfe very generall, and hard to bee obserued. And that (happily) was the cause, that it was afterward changed to that forme, which M. Fitz. in his Booke hath left vs, and which (with the alteration of a few words onely) is yet at this day put in vse.

For, vpon the renewing of the Commission of the Peace (which now a dayes happeneth as often as any person is newly brought into the same) there commeth of course a Writ of *Dedimus potestatem*, directed out of the Chaucerie to some auncient Iustice of the Peace, to take the Oath of him whose name is newly inserted, & to certifie the same into that Court at such day as the Writ commandeth.

This Writ is now accompanied with two Scedules, wherof the one containeth the Oath
of

of the office of a Iustice of the Peace, in this
forme:

YEE shall sweare, that as Iustice of the Peace in the Countie of *Kent*, in all Articles in the *Queenes Commission* to you directed, ye shal do E G A L right to the poore, and to the rich, after your cunning, wit, and power, and after the lawes and customes of the Realme, & Statutes thereof made: And yee shall not bee of counsell of any quarrel hanging before you: and that yee holde your Sessions after the fourme of Statutes thereof made: And the issues, fines, and amercements, that shall happen to be made, and all forfeitures which shal fal before you, yee shall cause to bee entred without any concealement (or embeasealing) and truly send them to the *Queenes Eschequer*. Yee shall not L E T, for gift, or other cause, but well and truely you shal do your office of Iustice of the Peace in that behalfe, and that you take nothing for your office of Iustice of the Peace to be done, but of the *Queene*, and fees accustomed, and costes limited by the Statute: and yee shall not direct, nor cause to bee directed, any Warrant (by you to bee made) to the parties, but ye shall direct them to the Bailifes of the said Countie, or other the *Queenes Officers* or Ministers,

The Oath of the office.
I. R E G A L
printed
Booke Fifth.
2. S V R -
C E A S E.
In the printed
Booke.
or

3. And his
Saints in the
printed
Booke.

or other indifferent persons, to do execution thereof : So helpe you God, and by the contents of this Booke.

The variance betweene this and that elder forme, standeth (as you may see by the Margent) in three points : whereof twaine be of no waight at all, but the third did need amendment. For, right godly and well did those 32. persons (that were put in trust to pen Ecclesiasticall Lawes) purpose to make this Lawe, amongst others:

Legitimum autem iuramentum, ijs verbis, & nullis alijs, suscipi volumus : Ita me Deus, per Dominum nostrum Iesum Christum adiunget.

This Oath of the Office consisteth of sixe Articles, which (for memories sake) I haue seene expressed in these sixe Verses following:

- 1 Do equall right to rich and poore,
as Wit and Law extends:
- 2 Giue none aduice in any cause,
that you before depends:
- 3 Your Sessions hold, as Statutes bid:
the forfeites that befall,
- 4 See entred well, and then estreat
them to the Cheaquer all:
- 5 Receiue no fee, but that is giuen
by Queene, good vse, or right:
- 6 Ne send Precept to partie selfe,
but to indifferent wight.

The other Scedule comprehendeth that
forme

forme of Oath, which (after the second abolishment of the vsurped authoritie of the Romish Pharaos, by the ioyous entrie of our gracious Queene Elizabeth) was in the first Parliament of her raigne (cap. 1.) appointed for Iustices of Peace (amongst others) to take, befoze that they should exercise the office : and it hath these words:

I WILLIAM LAMBARD, doe vtterly te-
stifie and declare in my conscience, that ^{The Oath of}
the Queenes Highnesse is the only supreme ^{Supremacie.}
Gouernour of this Realme, and of all other
her Highnesse Dominions and Countries, as
well in all spirituall and ecclesiasticall things
(or causes) as temporal : and that no foraine
Prince, Person, Prelate, State, or Potentate,
hath, or ought to haue, any iurisdiction, power,
superioritie, preheminence, or authoritie,
ecclesiasticall or spiritual, within this realme:
And therefore, I doe vtterly renounce and
forsake all foraine iurisdiction, powers, superiorities,
and authorities, and do promise, that from hencefoorth I shall beare sayth & true
allegeance to the Queenes Highnesse, her heires and lawfull successours, and (to my power) shall assist and defend all iurisdiction, priuiledge, preheminence, and authoritie graunted or belonging to the Queenes Highnesse, her heires and successours, and v-
nited

nited and annexed to the Imperiall Crowne
of the Realme : *So helpe me God, &c.*

There hath bene care taken, once, or twice,
(in our memorie) to exact this latter Oath
of all the Iustices of Peace throughout the
Realme, whereof some good hath ensued: But
yet many a Iustice there is, that (by indirect
practise) neuer tooke, either this, or the former:
whereof what harmes doe, and may growe, I
leauue to wiser and higher men, to be conside-
red: Adding this onely, that it would auayle
greatly to the furtherance of the Seruice, if
the *Dedimus potestatem* to giue these Oathes
were dirigible to the Iustices (and none other)
to minister the same not else where, but in their
open Sessions.

Of the power absolute, and limited, that the Iustices of the Peace haue.

CAP. XI.

Discretion.



The power of the Iustices of Peace,
whether you will consider it by the
view of this their Commission, or
by their authoritie contained in the
Statutes, is in some cases Limited, and (in o-
ther some cases) Absolute: By which latter
word, I doe not meane absolute Simply, but
after

after a Maner : For they may neither hang a man for a greuous Trespasse, nor fine him for a Felonie : and therefore, this absolute authoritie is to our Lawe better knowne by the name of Discretion, because the Iustice of Peace may exercise sometimes *Legis actionem*, and sometimes *Iudicis officium* : or (which is all one) *Iudicium*, & *Decretum*, as the case shall offer, and the law will suffer him.

It is a good Counsell which Aristotle giueth in his Rhetorikes *ad Theodectem*, that in the making of lawes, *Quoad eius fieri possit, quam plurima legibus ipsis definiatur, quam paucissima vero Iudicis arbitrio relinquantur* : & the Commission of the Peace (following that aduise) doth leaue little (or nothing) to the discretiō of the Iustices of the Peace, but bindeth them fast with the chaines of the Lawes, customes, ordinances, and Statutes.

Howbeit, our latter lawes of Parliament, although they also doe endeavour (for the most part) to holde the same course : yet, forasmuch as euery considerable circumstance can not be foreseene at the time of the making of the Lawe, they doe many times leaue to bee supplied (by the discretion of the Executioner of the Lawe) that thing which was not conueniently cōprehended before hand, by the wisdom of the Author of the Law. And therefore, although Discretion, be necessarie in the execution

execution of euery law (be it neuer so certainly set forth, and bounded in it selfe) yet (in the mouth and language of our Law,) that onely and properly is said to be done by Discretion, which is not specially limited with all the circumstances, but is indifferently referred to the consideration of the Iustice that is put in trust with it.

And truly it is to be wished, that Iustices of the Peace would not (by colour of this reference to their Discretion in some few cases) arrogate vnto themselves authoritie to vse their discretion, and to play (as it were) the Chauncellors in euery cause that cometh before them. For, no way better shall the Discretion of a Iustice of the Peace appeare, then if hee (remembering that hee is *Lex loquens*) doe containe himselfe within the lists of law, and (being soberly wise) do not vse his owne Discretion, but onely where both the lawe permitteeth, and the present case requireth it. Right well sayd Cicero: *est*

*sapientis Iudicis cogitare, tantum
sibi esse permissum, quan-
tum sit commissum ac
creditum.*

Of the *Jurisdiction*, and *Coertion*,
belonging to the *Iustices* of Peace.

CAP. XII.

AS Iustice cannot bee administred, without both a Declaration of the law, and an Execution of the same: So, to the end that our Iustices of the Peace may be able to deliuer Iustice, they are accomplished with double power, the one of Jurisdiction, and the other of Coertion, that is to say, with ample Authoritie, not onely to conuent the persons, but also (after the cause heard and adiudged) to constrain them to obey their order and decree.

This Jurisdiction of theirs is exercised, for Jurisdiction, the most part (if not altogether) about those causes which be in a maner the same that the Ciuill Lawyers do call, *Iudicia publica*: partly, because the Prince (who representeth the head of the common wealch) hath interest in the most of them, as well as that priuate person which is immediatly offended: and partly, because they are not commonly tried by such Action as other Ciuil and Priuate causes are, but rather by Criminal and Publique Accusation, Information, or Presentment.

And herein, the Iustice of the Peace is by the one halfe superiour to the ancient Conseruator of the Peace, who had onely Coertion

or Prehension in a few cases, and no Iurisdiction in any cause that I remember.

But if the authoritie of these Iustices should cease, when the fault is told, heard, and adiudged, then should they bee no better then halfe Iustices : and therefore the Law hath also put Cohertion, Execution, or punishment (as I sayd) into their handes : least otherwise their iudgements should bee deluded for want of power to bring them to effect.

Cohertion, or punishment, for what causes it is appointed.

This Punishment then, is an orderly execution of a lawfull iudgement, laid vpon an offender, by the minister of the Lawe : and it is done for foure causes : first, for the amendment of the offender : Secondly, for examples sake, that others may thereby be kept from offending : Thirdly, for the maintenance of the authoritie and credite of the person that is offended : and these three reasons be common to all such punishments. Seneca rehearseth the fourth small cause, that is to say, that (wicked men being taken away) the good may liue in better securitie : and this pertaineth not to all, but to Capitall punishments onely, as euery man may at the first hearing vnderstand.

The Romanes vsed specially, eight sortes of chastisements, knowen to them by these names, *Damnum, Vincula, Verbera, Talio, Ignominia, Exilium, Seruitus, Mors*, that is, losse of goods, imprisonment, stripes, retaliation, reproch,

reproch, banishment, seruitude, and death: All which, our lawe (before the Conquest) was wont to inflict, albeit that nowe, Seruitude, Retaliation, and Banishment, be out of vse.

The punishments that bee commonly put in execution at this day, and wherewith the Iustices of the Peace haue to do, may be deuided into Corporall, Pecuniarie, and Infamous. The sorts of punishment.

Corporall punishment, is either Capital, or Corporall. not Capitall. Capitall (or deadly) punishment is done sundry wayes, as by hanging, burning, boyling, or pressing: not Capitall, is of diuers sortes also, as cutting off the hand or eare, burning (or marking) the hand or face, boaring through the eare, whipping, imprisoning, stocking, setting on the Pillorie, or Cucking stoole, which in old time was called the Tumbrell. Of this kind of punishment, our old lawe (making precious estimation of the liues of men) had moe sortes then wee now haue: as pulling out the tongue for false rumours, cutting off the nose for adulterie, raking away the priue parts for counterfeiting of money, &c.

Under the name of Pecuniarie punishment, Pecuniarie. I comprehend all Issues, Fines, Amerciaments and Forfeitures of offices, goods, or lands.

And, if the Iustices of Peace may by vertue of their Commission deale with such Con- Infamous.
spirators,

spirators, as doe confederate together, to cause any person vniustly to be indited of Felonie, whereof afterwarde he is acquitted (as some do thinke they may) then is there a speciall punishment in that case appointed by law, which in 24.E.3.73. is termed Vilanous, and may be well called Infamous, because the iudgement in such case shal be like vnto the ancient iudgemēt in Attaint, as it is sayd 4.H.5.Fitz. Iudgement 220. and is (in 27.lib.Ass.Pl.59) set downe to be, that their oaths shall not bee of any credite after: nor lawfull for them in person to approch the Queenes courts: and that their lands & goods be seized into the Queenes handes: their trees rooted vp, and their bodies imprisoned, &c. And at this day, the punishment appointed for Periurie (hauiug somewhat more in it then Corporall or Pecuniarie paine) stretching to the discrediting of the testimonie of the offender for euer after, may be partaker of this name.

That Iustices of the Peace, be

Iudges of Record.

CAP. XIII.

It maketh not a little, both for maintenance of the Peace, and for the credite of the Iustices thereof, that they are numbred amongst the Iudges

Iudges of Record : for, on the one side euill doers will be afraid, when they shall see Memorials of their wickednes before their eies : and on the other side, the proceedings of those Iustices shall bee so much the more reuerenced and set by, as it shall appeare that their endeuours are countenaunced with the fauour of authoritie. And therefore, let vs see what is meant by the word Record.

The Latine men vse *Recordor*, when they Record, wil signifie, to keepe in mind, or to remember, what it is, in which sense the Poet sayd,

Sir ite audita recordor :

And after the same sense also doth our Law vse it. For Records be nothing else but Memorials (or Monuments) of things done before Iudges, that haue credit in that behalfe. And therefore, where King E. 1. doth in the beginning of the Booke (called Britton) set forth the Iudges of his Courtes, he saith of some, that they shall haue authoritie of Record : and of others, that they shall beare Record : both which doe meane but one thing, nannely, that they shall be trusted in the report of causes happening before them : and we yet say in common speach, Such a man shal beare record of a thing, when we intend to say, that he remembreth it, and can beare witnesse of it. So that in the vse of the word there is (in manner) no difference, and therefore let vs exam-

mine the matter.

One man may affirme a thing, and another man may denie it : but if a Record once say the word, no man shall be receiued to Auerre (or speake) against it. For (saith M. Bracton Fol. 156. writing of a speciall case, where the Shirife in his Countie hath Record) If men should bee admitted to deny the enrolled acts of the Court, then would there neuer be any end of controuerfies. And of the same mind, before him was M. Glanville, lib. 8. c. 8. And therefore, to auoid all contention that may arise, while one saith one thing, and one other saith an other thing, the Law reposeeth it selfe wholly and solely in the report of the Iudge : and hereof it commeth, that he cannot make any Substitute or Deputie in his office (as M. Bracton and Britton both, doe affirme) seeing that he may not put ouer the confidence that is put in him.

The Rolles be
Records.

This Record (or Testimonie) is first contained within the brest of the Iudge (as our Law speaketh) and afterward committed to the Rolles, which are therefore figuratiuely called Records also. For you may see (7. H. 6. 28. in Hildebrands case : 19. H. 6. 9 : and elsewhere) that during all the time of that Terme, in which any thing passeth before the Iustices at *Westminster*, the Record thereof is in *Scrinio pectoris*, in their owne hearts, or breasts,

breasts, so that they may at their owne pleasure correct or amend it: But after the Terme ended, it is only in their Rolles, ouer the which they haue no controlment. And this agreeth right wel with that which Britton Fo. 3. affirmeth, saying in the Kings person, thus: And albeit that we haue graunted to our Iustices to beare Record of the pleas pleaded before thē: yet by this we wil not, that their record shall be any warrant in their owne wrong, nor that they may raze or amend their Roll, nor make record against their enrolment.

Thus much generally of all Iudges of Record: now touching our Iustices of the Peace, it is the opinion of the Court (9. E. 4. 3: and 14. H. 8. 16.) and of diuers other Bookes in our Law, that euery one of thē (euen by himselfe) is a Iudge of Record. For (as you haue heard) he is made, by the great Seale, a matter of Record: and hath Iudiciall power giuen vnto him, euen by the first *Assignamus* of the Commission: Hee hath also a Seale of his Office, by the opinion of Brudnell. 14. H. 8. 16: and if he make any Warrant, although it be beyond his authoritie, yet it is not disputable by a Constable, or other inferiour Minister, but must be obeyed: And hee may take a Recognufance for the Peace, as appeareth, 7. H. 4. 34: and common experience telleth it: which none can do, but a Iudge of Record, be-

cause the acknowledging of that summe, is to remaine as a matter of Record: Yea, by good opinion (2. Hen. 7. 1.) a *Supersedeas* of the Peace, made by one Iustice of Peace, vnder his seale, being brought into the Sessions, is a sufficient Record to prooue, that there is a Recognisaunce of Peace taken by the same Iustice: and it is warrant inough to call the partie bounde thereupon, and if he make default, to Record the same. Moreover his Record (or testimonie) is in some case of greater force and value, then an Enditement vnder the oath of twelue men: for, his Record (as I will shew particularlie hereafter, in place conuenient) shall conclude the partie so, that he shall not be admitted to Trauerse or gaine say it 21. H. 6. 5: Fitzh. Fol. 18: 15. R. 2. cap. 2: 11. H. 7. cap. 15: & 33. H. 8. c. 6. Thus much being truely sayd of any one Iustice of the Peace: most truely may it bee affirmed, that two, or mo such Iustices, sitting in the execution of their authoritie, are Iudges of Record.

Great cause haue the Iustices of Peace therefore, to take diligent heede, that they abuse not this credite: either to the oppressing of any subiect by making an vntrue Record, or to the defrauding of the Prince by suppressing a faithfull and true Record.

How

How long time the authoritie

of the *Commissioners* of the Peace is to endure : and by what means it may be suspended, or determined.

CAP. XIII.

WE haue alreadie touched, that the power of the Commissioners of the Peace is not perpetuall : but now the place serueth to handle it at full.

The Commissioners of the Peace, are to continue during onely the pleasure of the Prince, by whose pleasure they were at the first appointed : and therefore, by the determination of that pleasure, their authoritie ceaseth also. Besides the which, there are other meanes to determine their Authoritie, as namely, the Accession of an other office : the Presence of a higher power : and (in some speciall case) the want of Adiournement of their Commission.

The pleasure of the Prince may bee determined, either by expresse word, or by implication, or by death. By expresse word.

The Queenes Maiestie therefore, may discharge the Commissioners of the Peace by her expresse Writ, vnder the great Seale. L. 5. E. 4. 3 2. And if she send a *Superseas* to all the Commissioners of the Peace, that wil suspend all their authoritie : But yet so, as it may bee reuiued

reuiued by a *Procedendo*: and therefore it doth not utterly determine their authoritie, as may be gathered by 12.lib.Aff.Pl.21.

By implicati-
on of a new
Commission.

Againe, when the Queenes Maiestie maketh other Commissioners of the same kind within the same limits, it is implied thereby, for auoiding of repugnancie, that the former Commissioners shall haue no longer power, although there be neuer a word spoken of the discharge of them: 3.Mar.Regi. Brooke. Tit. Commission 24. But yet, if there be Iustices of the Peace by Commission in a whole Cou-

Generall, and
proper Iusti-
ces.

tie, and afterward the Queene maketh an other man Iustice of the Peace, in one Towne of the sayd Countie, Chocke (onely against others) was of opinion 10. E. 4. 7. that the power of the first Commissioners continued still in that Towne, because that it is not altogether contrariant. And Iudge Fineux held also (20. H. 7. 8.) that if the Queene make a proper Iustice of the Peace within a speciall Libertie, yet may the generall Iustices of the Peace of that Shire meddle therewith: unless there be words of Prohibitiō in the Patent, as, *quod nulli alij Iusticiarij nostri se intromittant &c.*

If the auncient Commission of the Peace were to foure persons, and afterward the Queene should make one man a full Iustice of the Peace through the same limit, during his life: then should the hands of the foure Commissioners

missioners be closed, saith Marrow.

And a new Commission *pro hac vice tantum*, will determine the olde: So also, a new Commission to heare and determine Felonies, determineth the olde Commission of the Peace concerning Felonies, but not concerning the Peace: And a new Commission of the Peace, *ad inquirendum tantum*, is a determination of the old Commission, *ad audiendum & terminandum*, by Mar.

But it is plaine, by the preamble of the Statute (2. & 3. Phil. & Mar. cap. 18.) that the Law was taken, that if a Commission of the peace were first granted to certaine within a towne, & after another Commission had bene granted to others within the whole shire, that this had bene a *Superfedeas* to the Commissioners within the sayd towne.

Notwithstanding, this determination of the olde Commission (that we speake of) groweth not immediately by the making of a new Commission: but either after the reading (or proclaiming) of the new Commission at the Sessions of the Peace, or at the full Countie: or else by holding of some Session by vertue of the new Commission (in all which cases the olde Commissioners must take notice of the new Commission) or else after the giving of notice of the new Commission vnto the olde Commissioners: for, otherwise all the meane
acts

acts of the olde Commissioners, be good in law, Mar. & 21. H. 6. 29: & 34. lib. Ass. Pl. 28.

And, forasmuch as some Cities and Corporat Townes found themselves greued with the law, standing as hath bene remembred: it was specially ordained by the sayd Statute (2. & 3. Ph. & Ma. ca. 18.) that a Commission of the Peace and Gaole deliuerie made to a Citie or corporate towne, (not being a Countie by it selfe) should not be determined by the making of such an other Commission afterward to any of the Shire, Lath, Rape, or Wapentake, in which, that Citie or towne standeth.

Finally, it is to be noted, that in all cases where an auncient Commission of the Peace is determined by a new: yet no Proesse or Suite (hanging before the old Commissioners) shall be discontinued thereby: 11. H. 6. cap. 6: & 1. E. 6. cap. 7.

By the death or demise of the Prince, dieth also the power of all the Commissioners of the Peace made by him: for he maketh them *Iusticiarios suos*: so that he being once dead, or hauing giuen ouer his Crowne, they are no more his Iustices: and the Iustices of the next Prince they shall not be, vnlesse he please so to make them: 4. E. 4. 44: & 1. E. 5. 1.

Accession of
an other of-
fice.

It seemeth, that some tooke the Law to be, that if a Iustice of the Peace were created a Duke,

Duke, Marquesse, Earle, Vicount, or Baron, or were elected an Archbishop, or Bishop, or were made a Knight, or Iustice of any of the two Benches, or Serieant at the law: that then his Office of the Peace was determined thereby: because it could not be thought, that (his name being changed) he should remaine the same person: And so, if he were made Shirife, that his Iusticeship ceased also: because (as Mar. saith) he could not be both a Iustice and an Officer, to direct and serue, his owne Precepts: and so likewise, was it thought of him, if he were made a Coronor, but not so if hee were made an Vndershirife. And therefore, for explanation of the Law in the most of these cases, it was enacted (1. E. 6. c. 7.) that if a Iustice of the Peace were made a Duke, Marques, Earle, Vicount, Baron, Archbishop, Bishop, Iustice, of y^e one Bench or other, Knight, Serieant at the Lawe, or Shirife, that yet he should be Iustice of the Peace still: But that act was after ward bypon good reason controlled in part, and a new law made (1. Mar. Parl. 1. ca. 8.) by which it was ordered, that no man shall exercise the office of a Iustice of the Peace, during only the time that he is Shirife of the same Countie, wherein he is also Iustice of the Peace.

Furthermore, if the Iustices in Eire (being of a higher power then Iustices of the Peace)

By the presence of a higher power.
do

do(after proclamation therof first made) come into any Countie, and sit there by vertue of their authoritie: then ceaseth the power of the Commissioners of the Peace. Mar. And hee thinketh so likewise, if the Kings bench (vpon proclamation thereof made) should remooue into any Countie. But aske of this, for if it should be so, then it may be some question also, what is wrought by the comming of the Iustices of the *Nisprins* into the Countrie, who doe ordinarily bring Commission of Oyer, and Determiner, and of Gaole deliuerie with them.

By want of
Adiourne-
ment.

Lastly, if Iustices of the Peace, that haue a Commission *hac vice tantum*, doe sit by vertue of their Commission, and doe not Adiourne the same, it seemeth that their Commission is determined thereby. Brooke Tit.
Commission II.



THE SECOND

Booke, conteyning the

Practicque of one *Iustice*
of the Peace, out of
the *Session*.

That all the authoritie of the

Iustices of the Peace is exercised, ei-
ther *out* of the *Sessions*, or at (or by
reason of) the *Sessions* of the
Peace, &c.

CAP. I.



In the Booke be-
fore, I haue dilated
that which lieth in
the first part of my
Definition of the Iu-
stices of Peace: and
I haue therewithall
giuen the Reader a
Theoricque (or in-

The summe
of the first
Booke.

sight) as it were of their whole Office: in
shewing what it is, when it began, how it is
endowed, by what meanes it is mainteined,
and after what sort it may be determined.

But now, forasmuch as all the Power and
Seruice of those Iustices of the Peace is di-
rected

rected to that end which is disclosed in the latter halfe of the same Definition, namely, For the conseruation of the Peace, and for the execution of their Commission, & of the Statutes committed to their charge, it is meete that I enter into the Practique of their Office and dutie, & shew you from point to point how the same is to be done and administred.

And for the more lightsome proceeding herein: I will set forth the power of the Iustices of the Peace by a Distribution, though not Essentiall, yet such as may suffice to conueigh my whole plot and meaning.

A partition, of all that which foloweth in these three Bookes ensuing.

The summe of that which is hereafter contained in this second Booke.

Whether therefore, the Iustices of the Peace, do (by vertue of the Commission or Statutes) enquire, or Heare and Determine by the way of Iurisdiction: or else do keepe (or cause to be kept) the Peace, or doe punish and execute, by way of Coertion: And whether the same also be done, by their Regular power, or Absolute authoritie: It is alwayes practised and done, either out of the Sessions of the Peace, or else at (or by reason of) the Sessions of the Peace.

And that which is done out of the Sessions, is either such, as one Iustice alone may do: or else it requireth the helpe and presence of other Iustices with him. And therefore, first of that which one Iustice alone may do, out of the Sessions.

Of Suertie of the Peace, and the

Good Abearing: and of sundry things incident vnto the same: And what any one

Iustice of Peace (out of the *Sessions*) may doe therein.

CAP. II.

INASMUCH as the Conseruation of the Peace standeth, partly in prouiding that it be not broken, and partly in punishing such as haue already violated and broken it: and for that any one Iustice of the Peace is sufficiently armed with authoritie (out of the Sessions) to prevent the breach of the Peace, both by taking Suertie for the keeping of it, and for the good behaviour of Offendors, I thinke good, first to shew what Suertie of the Peace is: then, to open how it may be commanded: after that, to declare how the same commaundement shall be executed and brought to effect: fourthly, to disclose what shall become of the Suertie when it is taken; and lastly, to describe the Suertie of the Good behaviour (or Good Abearing) and to conferre the handling thereof with that of the Peace.

The ancient Normians had a manner of Suertie of the Peace, which they named Treues (the same that we call Trespasse) and which they vsed to giue after this order. Of whom it

C. i.

was

The partes of
this Chapter,

was demanded, did (in open Court) take him by the hand that demanded it, and did withall solemnly sweare, that neither he, nor any of his, should do harme vnto him. But our Gouernours, knowing that euill men be more restrained by losse of goods, then by conscience of an Oath, haue vsed to take sure bond, & that to the Prince, for the securitie of such as be in feare. And therefore, I will (at this day) call Suertie of the Peace, An acknowledging of a bond to the Prince, taken by a competent Iudge of Record, for the keeping of the Peace. And it is called Suertie, of the worde *Securitas*, because the partie that was in feare, is thereby the more secure and quiet.

What Suertie
of the Peace
is.

This Suertie may a Iustice of the Peace command, either as a Minister, when hee is willed to doe it by a higher authoritie: or as a Iudge, when he doth it of his owne power deriued from his Commission.

Suertie of the
Peace taken
vpon a Sup-
plicant, by a
Iustice of the
Peace, as a
Minister.

He doth it as a Minister, when the Writ of *Supplicans* (which in olde time was called *Breue de Mins*, as appeareth by the Register) directed out of the Chancerie, is deliuered to his handes; for then, he onely is to direct his Precept, to compell the partie (vpon that Writ) to find Suertie for the Peace. 21. Hen. 7. 20. Fineux.

The forme of which Precept (or Warrant) may be thus in English:

GEORGE

GEORGE MVLTON, one of the Iustices of the Peace of our Soueraigne Ladie the Queens Maiestie within the Countie of *Kent*, To the Shirife of the sayd Shire, the Conestables of the Hundred of *Wrotham*, the Borsholder of the towne of *Ightham*, & to all & singular the Queenes Maiesties Bailifes, and other Ministers, as well within Liberties as without, in the sayd Countie, and to euery of them, greeting: Know ye, that I haue receiued the commaundement of our sayd Soueraigne Lady in these wordes (reciting the whole *Writte of Supplicavit*, which is not alwayes of one forme, because it is sometimes directed to all the Iustices of the Peace, sometimes to them and the Shirife, and sometimes to one Iustice alone) or reciting onely the effect of the *Supplicavit*, thus:

Know ye, that I haue receiued the commaundement of our sayd Soueraigne Lady, to compell *A. B.* of *Ightham*, in the said Countie Yeoman, to find sufficient suertie for her Maiesties Peace by him to bee kept towards *C. D.* of the sayd Towne of *Ightham* Tailor: And therfore on the behalfe of our sayd soueraigne Lady, I command and charge you, iointly and seuerally, that immediately vpon the receipt hereof, you cause the sayd *A. B.* to come before me, at *Ightham* aforesayd, to

G. ij.

find

find sufficient suertie and mainprife, for the Peace to be kept towards our said Soueraigne Lady, and all her liege people, and specially towards the said *C. D.* And if he the said *A. B.* shall refuse thus to do, that then you him safely conuey, or cause to be safely conueied, to the next Gaole of her Maiestie in the said Countie, there to remaine vntill that he shall willingly doe the same. So that hee may bee before the Iustices of the Peace of our sayd soueraigne Lady within the said Countie at the next generall sessions of the Peace (to be holden at *M.*) there to answer to our sayd Soueraigne Lady for his contempt in this behalfe. And see that you certifie your doing in the premisses, to the sayd Iustices at the sayd Sessions, bringing then thither this Precept with you. Yecouen at *Ightham* aforesayd, vnder my Seale, the fourth day of August, in the 30. yeare, &c.

Suertie of the Peace taken by a Iustice of the Peace as a Iudge.

A Iustice of the Peace, may also by vertue of his Office, and as he is a Iudge, command this Suertie to be found: and that, either of his owne motion and discretion, or else at the request and prayer of another.

By his owne discretion.

For hee may cause a Common Baretour, Riottour, one that maketh an Affray, or other person to him Suspected, to find Suertie of the Peace, 9. Edw. 4. 3. *Curia.* And if he see men contending in hote words, and threatening the
one

one to hurt (or kill) the other, he may of Discretion, and ought of Duetie (as I thinke) to commaund them to find Suertie of the Peace, and thereby prouide for their mutuall safetie. For, as he is put in trust with the care of the Peace, so ought hee both to employ his wit, and to vse his authority, to preuent the Breach of the same. And if a man that was bound to keepe the Peace, haue broken his bond, the Iustice of Peace ought of Discretion to bind him of new, 21. Edw. 4. 40: and Marrow.

And his authoritie is so little to be controlled in this matter, that M. Marrow is of the opinion, that if a Iustice of the Peace should procure one man to demand Suertie of the Peace against another, and he himselfe should graunt a Warrant for it, by which the partie is arrested: yet no Action would lie against that Iustice for his so doing: because hee might haue graunted it without any demand made: and then it shall not be sayd, but that hee saw cause to prouoke the partie to aske it, and for himselfe to graunt it.

In commanding this Suertie, at the suite of *Suertie at the* another, or of his owne discretion, sundry *request of an* things are wisely to bee considered: first, for *other.* whome, and against whom: then, for what cause, and how, it ought to be required or commaunded: and lastly, by what meanes it shall be enioined.

For whom,
and against
whom, *Suertie*
of the Peace
lieth.

The wife, if she be threatened to be killed, or to be outrageously chastised by her husband, may with good reason demaund the Peace against him. Fitzher. Nat. Br. Fo. 80 : & 239. And I doe not doubt, but a Iustice may (in such a case) commaund it vpon his owne discretion.

The husband also may demaund the Peace against his owne wife in the like case : and any man may demaund it against the wife of another. Mar.

A man attainted of Treason, or Felonic, or convict of Heresie, or Abiured, a Dumb man, or an Infant, (though within 14. yeeres of age) or a Villaine against his Lord, may demaund, and ought to haue, Suertie of the Peace, Mar. And I doe not find any strong reason, why the Lord against his Villaine, or another man against a dumbe man that is not deafe, or against an Infant aboue the age of 14. yeeres, ought not vpon good cause to haue it, though perhaps the two last cannot be bound for themselves. But a mad man shall not haue Suertie of the Peace, at his owne request (as M. Mar. thought) because he hath no discretion to aske it : and therefore (if there be cause) he ought to be provided for by the discretion of the Iustice, as I thinke.

Neither shall Suertie of the Peace be granted against a mad man, except he haue *Lucida inter-*

internalla, that is to say, certaine respites and eases from his Lunacie, in which hee may seeme to haue the vse of reason and right iudgement.

A man attainted in a Premunire, or that is an Alien bozne (and no Denizein) ought not to haue this Suertie at his desire, as M. Mar. taketh it: But perhaps he would haue changed his opinion, in the case of Premunire (if hee had liued at this time) vpon sight of the Statute 5. Eli. ca. 1 : for, such a man may not now be killed, as though he were out of the protection of the Queene: and as touching the Alien, some thinke there ought to be a difference, betweene such an Alien as is of the Enmitie of the Queene, and him that is of her Amitie: for, the Statutes (Mag. Car. ca. 30 : 9. E. 3. ca. 1 : 14. E. 3. Sta. 2. cap. 2. and sundry others) do all vse that difference in Marchant strangers, and do prouide, that such of them as be not Enimies of the Realme, may both safely come into the Realme, and tarie heere, and go hence, at their free pleasures.

But the case may well be doubted of, because the Commission it selfe seemeth to authorize the Iustice of Peace, no further then to prouide for the Queenes people, of which number no Alien seemeth to be. But why any Alien may not be bound to the Peace, I doe not yet see.

Furthermore, one Iustice of the Peace, (saith M. Mar.) may graunt this Suertie to any man, against one of his fellow Iustices. But as M. Mar. requireth a Discretion in a Iustice of the Peace, when Suertie is craued of him against a Shirife, Coroner, Escheator, or such other Officer, (whome he wisheth not to be bound to keepe the Peace *versus cunctum populum*, but onely towards him that prayeth it, least otherwise it should argue them to bee unwoorthy of such Offices) so, much more he ought to vse good discretion, in graunting it against his fellow Iustice, least otherwise he both bying the Office in contempt, and himselfe to reprove by it. But I doubt not, but that one Iustice of Peace (if he wil) may pray Suertie of the Peace at the handes of his fellow Iustice against an other person: and the Recognuance may then be according to the common forme, with *Et precipue versus, &c.*

Hitherto of those, for whome, and agaynst whom, the Iustice of Peace may graunt this Suertie when it shall be required: which will suffice to giue him light what to doe in other like cases.

But some others there bee perhaps, with whome he may not well meddle: As if a man haue cause to require the peace agaynst a Lord: he for so small a cause is not to be arrested (as I take it) by warrant from a Iustice,

Suertie of the
Peace against
a Lord.

nor yet by a *Supplicavit* out of the Chancerie. But the Lord Chancellor may in such case graunt to the partie a *Subpœna* against that Lord for it, as it seemeth by 35. H. 6. Fitz. *Tit. Subpœna* 20. For such an opinion hath the law conceiued of the peaceable disposition of Noble men, that it hath bene thought ynough to take one of their promises vpon Honour, that he would not breake the Peace against a man. Brooke, *Tit. Contempts*. 6 : 17. E. 4. 4 : & 24. E. 3. 33 : & *Sub pœn.* Fitzh. 20.

But whether the Lord Chancellor may award an Attachment vpon such a *Sub pœna*, it hath bene (in our memorie) a great question. And if there be cause to aske the Peace against one that dwelleth in the Cinque Ports, that must bee by Writ out of the Chancerie, directed to the Constable of Douer, and the Wardeine of the Cinque Ports, Fitzh. *Nat. Bre.* 80 : & *Regist.* 88.

The cause, for which this Suretie of the Peace may be required (or commaunded) appeareth in the first *Assignamus* of the Commission of the Peace, in these wordes, *Et ad omnes illos qui aliquibus de populo nostro, (de corporibus suis, vel de incendio domorum suarum) minas fecerint, ad sufficientem securitatem de pace &c. inueniendam, &c.* which M. Fitzh. (Fo. 8.) construeth thus : Hee that is threatned that he shall be hurt in his bodie,

or

For what causes Suretie of the Peace may be required.

or that his house or goods shall bee burnt, may demanda Suertie of the peace for his safegard in that behalf. But (saith the Court 17.E.4.4.) if a man will demanda the Peace, because he is in feare that an other man will take and imprison him, it ought not to be granted: and one peeledeth the reason to be, because he may haue a Writ *De homine replegiando*, or an Action of false imprisonment, and may thereby recouer the damages of his imprisonment.

The same reason might be made agaynst the demanda of the Peace, where a man is threatned with Batterie: and yet it is cleare, that in such a case the Suertie of Peace ought not to be denied him: and truly to threaten imprisonment, is within the wordes *Minas de corporibus*, no lesse then Batterie it selfe: and like harme may happen by hard imprisonment, and cruell beating. It shal be good therefore to enquire of this matter.

But I take it somewhat cleare, that a Iustice of the Peace may not (by this Commission) award a Precept of the Peace, in the behalfe of a man that will require it, because he is at variance with his Neighbour, and feareth that he will do harme to his seruants, or cattell. For in that case M. Fitzh. helpeth him with an old Writ to the Shirife, as he findeth it in the Register. Fitzh. Nat. Bre. 80.

The

The Peace being thus (for good cause) required, it is the common maner to exact an Oath of the partie: whereby the Iustice may be the better enformed and led to thinke, that the partie doth not aske it for malicious vexation of an other, but of very feare, and for the needfull safetie of himselfe and his. And M. Fitzh. (in his Nat. Bre. Fol. 79.) laboureth to shew, that the Iustices of the Peace ought not (without such an Oath) to graunt this Suertie, at the suite of any man: For as much as not onely the Iudges of the Kings Bench doe yet take an Oath in such case, but the ancient course of the Law was such in the Chancerie it selfe also, although it be now a dayes otherwise vsed there.

How Suertie of the Peace is to be required.

By Oath.

Now that a Iustice may in this case the better iudge of this Feare, let him hearken what M. Bracton (Fol. 16.) saith: *Metus est* (saith he) *presentis, vel futuri periculi causa, mentis trepidatio: talis enim debet esse metus, qui in se contineat mortis periculum, vel corporis cruciatum.* And therefore, if a Iustice of the Peace, do perceiue, that the Peace is demanded against such a person, as for his impotencie is not like to breake the Peace, hee may safely denie it, saith M. Marrow: But *Satius est peccare in alteram partem*, as I suppose, least (if hee be slayne that demaunded it) the Iustice be worthily blamed, for that he prouided not for his
life

life and safetie.

Besides all which, the common forme of the Recognisance, is to bind a man from procuring hurt, the which any impotent man is sufficient to accomplish.

By what
meanes *Su-*
ertie of the
Peace shall
be enioyned.
By *Word*.

It resteth, that I shew, by what meane this Suertie may be enioined: and that is, either by Word, or by Writing vnder Seale. For, a Iustice of the Peace may by word onely commaund a man (being in his presence) to finde Suertie of the Peace: 9. E. 4. 3. for seeing that he is a Iudge of Record (saith M. Fitz. Fo. 8.) his Precept by mouth, is stronger then his Precept in writing.

By *Writing*.

So, if the Peace be demanded against one that is in his presence, he may commaund the Shirife, or other known Officer, or his owne seruant (if they be then present also) to arrest the partie to finde this Suertie, 14. H. 7. 8: & Marrow. For, it is not so much the arrest of the Minister, as of the Iustice himselfe: But, if either the Officer, Seruant, or Partie, bee absent, then it is requisite to make a Warrant (or Precept) in writing: The forme whereof may bee thus in English: for I see no cause yet, why it should bee directed in Latine, to a Conestable, or Borsholder, that (by all presumption) vnderstandeth no Latine.

ELIZA-

ELIZABETH by the grace of GOD, *Kanc.*
&c. To our Shirife of *Kent*, the Constables of the Hundred of *Wrotham*, the Bors-
holder of the Towne of *Ightham*, and to all
and singular our Bailifes, and other our Mi-
nisters in the sayd Countie, as well within li-
berties as without, greeting. Forasmuch as
A. B. of *Ightham* afore sayd, Yeoman, hath
personally come before G. MVLTON of
the sayd towne Esquier, one of our Iustices
of the Peace within the sayd Countie, and
hath taken a corporall Oath, that he is afraid
that one *C. D.* of *Shipborne*, in the said Coun-
tie Yeoman, will beate, wound, maim, or
kill him, or burne his houses, and hath there-
withall prayed suertie of the Peace agaynst
the said *C. D.* Therefore we commaund and
charge you iointly and seuerally, that imme-
diately vpon the receipt hereof, you cause
the sayd *C. D.* to come before the said *G. M.*
or some other of our said Iustices, to find suf-
ficient Suertie & Mainprise, as wel for his ap-
pearance at the next quarter *Sessions* of our
Peace to be holdē at *M.* in the said Countie,
as also for our Peace to be kept towards vs,
& all our liege people, & chiefly towards the
said *A. B.* that is to say, that he the sayd *C. D.*
shall not do, nor by any meanes procure or
cause to be done any of the said euils, to any
of our said people, & especially to the said *A.*
B.

The Precepts
for the Peace.

All, or any
one of these
causes may
suffice.

B. And if he the sayd C. D. shall refuse thus to doe, that then immediatly you him safely conuey, or cause to bee safely conueyed, to our next prison in the said Countie, there to remayne vntil he shal willingly do the same: So that he may be before our sayd Iustices, at the sayde next generall Sessions of the Peace to bee holden at *M.* aforesaid in the sayd Countie, then and there to answer vnto vs for his contempt in this behalfe. And see, that you certifie your doing in the premisses to our sayd Iustices at the sayd Sessions, bringing then thither this Precept with you. Witnesse the sayd G. M. at *Ightham* aforesayd, the fourth day of August, in the 30. yeere of our raigne.

Do thus, in the name of the Iustice himselfe, *Mutatis mutandis.*

GEORGE MVLTON Esquire, one of the Iustices of the Peace of our Soueraigne Lady the Queene, within the sayde Countie, to the Shirife, &c. greeting.

Forasmuch as *A. B. &c.* hath personally come before me, &c. These shall be therefore, on the behalfe, and in the name of our sayd foueraigne Lady, to commaund you ioyntly, &c. to come before me, or one other of hir Maiesties sayd Iustices of the Peace in the sayd Countie, &c. Given vnder my
Scale,

Seale, at *Ightham* aforesayd, &c.

It is meete, that the Precept for the Peace doe expressely containe the cause of the Peace within it: for otherwise, how can the Officer of Partie, take knowledge that Suertie must be provided for it? Wea (by the way let me say it) euery Precept (made by a Iustice of the Peace) ought to comprehend the special matter vpon which it proceedeth: euen as all the Queenes Writs doe beare their proper cause in their mouth with them.

And as for the Forme that is now commonly vsed (To answer to such things as shall be objected) it was not fetched out of the olde and learned Precedents, but lately brought in by such as either knew not, or cared not, what they writ.

The Warrant of the Peace is the better also, if it beare Date of the place where it was made: for if a man be to plead such a Precept, for his excuse in an Action of false imprisonment brought against him, he ought (in his Plea) to shew the place where the Warrant was made 14.H.8.18.

And this Precept may also be directed to any indifferent person, by name, though he be no Officer at all: for so it seemeth to be permitted in the Oath of the Iustices of the Peace, and so is that Booke also 14.H.8.18.

The commanding of Suertie of the Peace
hath

How the
commaundement of the
Peace shall
be executed.

hath thus appeared : and now the execution, and bringing of that commaundement to effect, must next be disclosed.

The execution of this Precept standeth, partly in seruing the Precept it selfe : and partly in taking the Recognisance, if the partie doe come with Suerties, and if that there be no let in the way.

And because (for the most part) there is but one and the same maner of doing, whether the Precept come from the Iustice of the Peace, as he is a Minister, or as he is a Iudge, I also wil handle them together, noting by the way, those few differences that shal arise betweene them.

The seruing
of the Pre-
cepts for the
Peace.

If such a Precept bee made ioyntly to twaine, yet the one alone may serue it : If it be directed to the Shirife, then hee may commaund his Bailife, Vnder-shirife, or other (sworne & knowen) Officer, to serue it, without writing any Precept. But if he will commaund another man (that is no such Officer) to serue it, hee must giue him a written Precept : for otherwise a Writ of false imprisonment will lie for the Arrest. And if it be directed to the Baylife, or to a seruant of a Iustice of the Peace, or other stranger, they must serue it themselves : for they can commaund none other to doe it, neither by worde, nor Precept, Marrow.

A sworne

A Swoyne and knowen Officer needeth not to shew this Warrant, when he doth serue it vpon a man: 8.E.4.14: & 20.H. 7.13. &c. for his Office doth (after a sort) authorize him. But if the Iustice will set his seruant to serue it, that seruant must shew the Warrant, if the partie demandaunt it: and otherwise the partie may make resistance: 8.E.4.14.

A Iustice of the Peace (saith M. Brooke, *Titulo Peace 9.*) may make this Warrant returnable before himselfe, and the Baylife needeth not to carie the partie before any other Iustice: But Iudge Fineux (21.H. 7. 20.) saith, that if a Iustice of the Peace doe make a Warrant of the Peace. *Ex Officio*, (that is, without any Writte of *Supplicauit* awarded) then the partie may choose to appeare before him, or any other Iustice in the Shire: and that he shall punish the Bailife in false imprisonment, if he doe otherwise compel him: But otherwise it is in the execution of the Writ of *Supplicauit*: for he alone to whose hands it first commeth, is authorized to execute and returne that Writ. And therupon M. Fitz. (in his *Nat. Bre. Fol. 81.*) affirmeth, that if such a Writ of *Supplicauit* be deliuered to the Shirife, then he may both execute it alone, and also take Suertrie by Recognisance, which otherwise (being but a Conseruator) he could not doe, because the Writ doth so enable him, yet Littleton 9.

E. 4. 31. is to the contrary.

The Officer ought also to require the partie to come and find Suertie of the peace, before that he do arrest him, by the opiniō 5. E. 4. 13 : And in truely, the common forme of the Precept is, And if he refuse, &c. then he shall conuey him to the Gaole : and therefore, if he peeld to come and find Suertie, the Officer may neither absolutely arrest him, nor take any fee of him.

And this may be the cause, that when one appeareth vpon such a Warrant before the Iustice of Peace, the Iustice needeth not to demand Suertie of him, but may commit him, if he do not offer Suertie : 4. H. 7. 9.

If a Bailife doe arrest a man for the peace, before that he haue any Warrant, and then afterward do procure a Warrant for it : this neuerthelesse is unlawfully done, and will not excuse him in an action of false imprisonment : *ibidem* : But if the Bailife doe cause one by force of a Warrant to come and find Suertie of the Peace, and when the partie is brought, the Iustice will not bind him, yet the Bailife is excused. 21. H. 7. 22.

If suertie of the Peace bee required at the hands of a Iustice of the Peace (that dwelleth out of the Countie) against a man within the Countie, the Iustice may graunt a Precept to be serued in the Countie : but when the partie shall

shall be thereupon warned, and commanded to find Suertie, the Officer may not carrie him out of the Countie to the Iustice of Peace that made the Warrant. Mar: For, a Iustice of the Peace hath no authoritie, but in the Countie where he is Iustice. 13.E.4.8. & *Comment. Plowd. 37.* and therefore, it may be doubted also, whether such a Warrant be good, or no.

The Case was there, that a Iustice of Peace in one Countie, pursued a Felon, and tooke him in an other Countie, whereupon it was holden, that he ought to be committed to the Gaole of the Countie wherein he was taken, and not of the Countie, wherein he which toke him was a Iustice: for that, hee (being out of his Countie) had no more authoritie, then a private man. But yet, the Bailife may not dispute the sufficiencie, or insufficiencie of such a Warrant, because hee that atwardeth it is a Iudge of Record: 14.H.8.18.

That which hath bene hitherto sayd, is of the execution of the former part of the Warrant for the Peace, that is to say, to warne and cause the partie to come and finde Suretie for the Peace: But if it fall out, that he refuse to come and put in such Suertie, then may the Officer, by vertue of his Warrant comuey him to prison. For (if you remember) the wordes are, And if he shall refuse, then. &c. And if he adde resistance to this refusall, and make as-

fault vpon the Officer, then may that Officer iustifie the beating, or hurting of him, 21. H. 7. 39. Fineas. But, for our better proceeding, let vs heare consider what an Arrest is.

What an Arrest is.

Budee in his Greeke Commentaries, is of the opinion, that the French worde (Arrest) which with them signifieth a Decree, or Iudgement of a Court, tooke beginning of the Greeke *ἀρrestos*, that is, *placitum*: and (as wee might say) the pleasure (or will) of a Court.

And albeit that it were not out of our way, to thinke that it is called Arrest, because it staileth (or resteth) the partie: yet I beleue rather that we receiued the name from the Normane lawes, because we vse it in the same sence with them: For commonly (with vs) an Arrest is taken for the execution of the commandement of some Court, or of some Officer in Iustice. But howsoeuer the name began, An Arrest is a certaine restraint of a mans person, depriuing it of his owne will and libertie, and binding it to become obedient to the will of the Lawe: and it may be called the beginning of Imprisonment. The Precepts and Writs of the higher Courtes of Lawe, doe vse to expresse it by two sundry words, as *Capias* and *Attachias*, which signifie, to take (or catch) hold of a man. But this our Precept noteth it by the words *Duxi faci-*

as, (cause him to be comieied, &c.) for that the Officer hath (after a sope) taken him before, in that he comieth vnto him, and requireth him to go to some Iustice of the Peace.

To this Arrest, all Lay persons (vnder the degree of Lords or Peeres of the Realme) be subiect: And Ecclesiasticall persons (if they be not attendant vpon diuine seruice) may be arrested for the Peace also, Mar.

The end therefore is, that if the partie will not come to find Suertie of the Peace, the Officer may (vpon that Warrant) arrest and cary him to the Gaole, where he shall remaine, vntill that he will freely offer, and find it.

And here it is good to be enquired, whether the Release (or Death) of him that prayed the Peace, will not be sufficient cause to deliuer such a prisoner: and if it shall be, then by what order he shall be deliuered. For, as it seemeth to some, that any Iustice of the Peace, may (vpon his offer) take the Suertie, and deliuer him: so it may be some doubt, whether he may be deliuered (vpon the death, or release of the partie) without the helpe of a Sessions, or Gaole deliuerie.

It appeareth 4. E. 4. 16. and by the opinion of Brian, 2. H. 7. 2. & 4. that if such an imprisoned person had a suite hanging in the Common place aforehand, he might by a Wit of Priuilege be discharged of the same, if the par-

W.iii.

tie,

Deliuerie of him that is imprisoned, for refusing to find *Suertie*.

tie, at whose sute hee was arrested for the Peace, were not readie in Court at the day of the returne of the Writ when he should be called to pray there againe the Suertie of the Peace against him: and he saith, that it had bene alwaies their common course so to doe: but other there were of a contrary opinion.

And it seemeth a hard case, that without any sufficient notice of such a removing of the partie, a man should be defeated of his Suertie for the Peace.

To what Iustice he that is arrested, may goe.

But now, if the partie shall yeeld to find Suertie of the Peace, then may he be at his libertie (if the Precept proceede *Ex officio*, and without the Writ of *Supplicavit*) to go to any other Iustice of the Peace, to offer this Suertie. For such (as I told you before) is the opinion of Judge Fincux. 21. H. 7. 20. though Master Brooke (Peace 9. and Faux Imprison. 11.) liketh better to giue the election thereof vnto the officer.

7462 5 Rep. 59.

And I do remember, that a Iustice of the Peace was (by order in the Starre chamber) thrust out of the Commission, only because he refused to accept Suertie of the Peace, offered vnto him, vpon a Warrant awarded by one his fellow Iustice, to whome the partie (as he alleaged) durst not go to giue it, for feare that he would execute vpon him the malice that he bare against him.

But

But here againe, the officer had neede to be advised: least he find much trouble in following the partie, whither he shall please to lead him. For, as there may be iust causes to yeeld vnto the request of a man that shall dislike to be brought before that Iustice which gaue out the Warrant, either for some matter of priuate displeasure, or for the great distance of his dwelling, or for such other reason: So yet (without good allegation made) I allow not that the Officer shall be drawn out of the Division and Limit where both he and the partie doe dwell. For in so doing, the officer, and not the offender, may seeme to be punished.

Whereupon also it happeneth often, that such persons, (choosing rather to be bound by any other, then by him that maketh the Warrant) do offer themselves, and do become bound before some other Iustice: and doe withall procure a *Superfedeas* from him to be discharged of any other Arrest to be made vpon them. Yea, and many times (hearing of such Precepts, and misliking to be bound in the Countrie) they go vpon to *Westminster*, and do giue Suerrie of the Peace there, either in the Kings Bench for a time onely (as the manner of that Court is) or in the Chauncerie for euer, or for a time (as they vse it) and doe thereupon procure a *Superfedeas* from the Court where they are bound, to close the hands of the Countrie Iu-

stices. And therefore it is not amisse to say some what of this matter of *Supersedeas* also.

Superseded by a Just. of Peace. If therefore, a Iustice of the Peace, will (by a *Supersedeas*) discharge a precept for the Peace, (awarded by his fellow Iustice, by vertue of his office, and not by force of a *Supplicavit*, which is of an higher nature and cannot be so avoided) then shall he do well, if he take the Recognisance after the selfe same sort, in all points, as the forme of the former Precept doth require.

For, as it is good reason, that (having taken Suertie for the Peace) he may by his *Supersedeas* saue the partie from finding other Suertie for the same cause: So is it not reasonable, that he should proceed otherwise then according to the first Precept, and thereby discharge a matter of Record that was made by one of equall authoritie with himselfe. Fitzh. Fol. 9.

And this *Supersedeas* (sent by a Iustice of the Peace) is sufficient, although it neither name the Suerties, nor containe the summes in which they are bound: But yet, it is the better forme to expresse them both: as well because the higher Courts vse so to doe, as also that if the Bailife, Constable, or other Officer (to whom it is deliuered) be called at the next Sessions by the suite of him that sought to haue the Peace, to shew how he hath executed his

his Warrant, and doe come in and shew forth the *Supersedeas*, then the partie that is bound may bee called thereupon at the day that appeareth to be limited vnto him by the *Supersedeas*: for it is vnder the seale of a Iustice, and doeth testifie that the partie is bound, and hath found suertie, to appeare at a certaine day: and if he make default, that (being Recorded) shall be sufficient to cause him to forfeit the penaltie of the Recognisance, although the Iustice that awarded it, shall omit to bring in the Recognisance it self, according as he ought now to do by the Statute, 3. H. 7. cap. 1.

And this may be gathered vpon the opinion 2. H. 7. 1. and may also bee seene by this forme of the *Supersedeas* here vnder written.

WILLIAM SEDLEY Esquier, one of the Iustices of the Peace of our Soueraigne Lady the Queens Maiestie within the Countie of *Kent*, To the Shirife, Bailifes, Constables, Borsholders, Ministers, and other the faithfull ministers, and subiects of our sayd Soueraigne Lady within the sayde Countie, and to euery of them, sendeth greeting: Forasmuch as *A. B.* of &c. Yeoman hath personally come before me at *Southfleete*, &c. and hath found sufficient suertie, that is to say, *C. D.* and *E. F.* &c. Yeomen, either of the which hath vndertaken for the sayd

The forme of a *Supersedeas*, by a Iustice of the Peace.

sayd *A. B.* vnder the paine of xx. li. and he the sayd *A. B.* hath vndertaken for himselfe vnder the paine of xl. li. that he the sayd *A. B.* shall well, and truly keepe the Peace, towards our sayd soueraigne Lady, and all her liege people, and specially towards *G. H. &c* Yeoman, and also that he shall personally appeare before the Iustices of the Peace of our sayd Soueraigne Lady within the sayd Countie, at the next generall Sessions of the Peace to be holden at *M.* there: Therefore, on the behalfe of our said soueraigne Lady, I commaund you, and euery of you, that yee vtterly forbear and surcease, to arrest, take, imprison, or otherwise by any means (for the sayd occasion) to molest, the sayd *A. B.* And if you haue (for the said occasion, & for none other) taken, or imprisoned him, that then you do cause him to be deliuered and set at libertie, without further delay. Yeouen at *Southfleet* afore said vnder my seale, this last day of Iuly in the 30. yeare, &c.

Which also may bee in the name of the
Queene, and vnder the Teste of the
Iustice of the Peace, thus:

ELIZABETH, by the grace of God, &c.
To the Shirife, &c. greeting: Forasmuch
as *A. B.* hath come before *Thomas Fane* Es-
quier,

quier, one of our Iustices of Peace within our sayd countie, and hath found, &c. We therefore commaund you and euery of you, that ye forbear, &c. Witnesse the said G. M. at Hinton aforesayd, &c.

Thus much of the *Superfedeas* issuing from a Iustice of the Peace, the which ought to withhold and stay the proceeding of his fellow Iustices in the sayd cause: in so much that if any Officer by any of their Warrants, hauing this *Superfedeas* deliuered vnto him, wil neuertheless vge the partie to find new Suertie for the Peace, he may refuse to giue it, and (if he be committed to prison for such his refusall) hee may (as I thinke) haue his action of False imprisonment agaynst the Officer vpon the same.

I reade (21. E. 4. 40.) that a *Superfedeas* proceeding out of the Chancerie, will discharge a Suertie of Peace taken before the Iustices in the Bench of the King. Much more then, will a *Superfedeas*, sent out of the Chancerie, or the Kings Bench, discharge a Precept for the Peace that is awarded from any inferior Iustice of the Peace. And if the Iustice of Peace, to whome a *Superfedeas* out of such an high Court shall be deliuered; will not thereupon surcease, an Attachment may bee awarded agaynst him for his contempt, and he may be imprisoned, and fined for it.

It is good counsell therefore, that M. Fitz. (in his Na. Br. Fo. 238.) giueth, where he wil-
leth the Iustices of Peace (after such a *Super-
sedeas* receiued) to forbear to make any war-
rant to arrest the partie : and if they haue a-
warded it, then to make their owne *Superse-
deas* to the Shirife and other Officers, thereby
commaunding them to surcease to put it in ex-
ecution.

The taking of
the *Recogni-
sance* for the
Peace.

This impediment of *Superse-
deas*, (lying
after this sort, as you haue seene, in the way to
the Iustice of the Peace) thus passed ouer, let
vs now suppose the partie serued with the
Precept, to come before some Iustice of the
Peace : and let vs enter into the taking of the
Recognisance of him : for that is one part
of the execution of the Warrant for the Peace,
and may doe seruice, whether the partie come
to him that made the Precept, or goe to any o-
ther.

If the Iustice of the Peace deale in this
matter, as a Iudge, and by vertue of his Com-
mission, then the number of the Suerties, the
summe of their bonde, their sufficiencie in
goods, (or lands) the time how long the partie
shall be bound, and such other circumstances,
are referred wholly to his owne consideration:
and if he be deceiued in the abilitie of the Su-
erties, he may compell the partie to put in o-
thers : Mar : For the auoiding of which deceit
also,

also, the Iustices of the Common Place (7.H. 6.25.) did examine the abilitie of the Suerties vpon their Oaths, &c.

The commune maner is, to take two Suerties, besides the partie himselte: and good reason it is that those should be such as haue their names registred in the Booke of Subsidie: for albeit that here and there some may bee sufficient that were not assessed to the Queene, yet it standeth not well together, that he should become bound to the Prince in x. or xx. pounds, that was not in the Subsidie found worth any thing at all. And, the case may be such, that Suerties only, and not the principall partie, shall giue the Bond. For, if the Peace be prayed against a Wife, or an Infant vnder the yeares of discretion, it seemeth, that they shall be bound by their Suerties onely, as was the Monke, or Chanon, 36.H.6.23.

But if the Iustice of Peace shal commaund the Peace as a Minister in execution of the Writte of *Supplicavit*, then must hee behaue himselte as the Writ it selfe directeth him: and that hath not bene alwayes after one maner.

If some foyme commaundeth him to take sufficient Manucaptors (in any paine or sum to be reasonably set by himselte) so that hee will be answerable for it at his owne perill: and some willethe him to take sufficient Suertie,

tie, in a summe certainly prescribed vnto him, as a hundred pounds in all, or euery of them in twentie pounds, as it may be seen at large, in the Register of Writs. Fo. 89.

A Iustice of the Peace (saith M. Marrow) may take this Suertie by a Gage, or Pledge, which shall not be forfeited thereby, but pawned onely, so that the partie shall (vnder a certaine paine) keepe the Peace, which paine he shall forfeit, if he breake the Peace. And (by his opinion) a Iustice of the Peace may also take this Suertie by an obligation made to himselfe, by the name of Iustice of the Peace: If or so shall it be (saith he) *ad usum Domini Regis*: But if it were made vnto him without his name of Iustice of the Peace, that then it could not be to the vse of the King, vntlesse it had the words, *ad usum Domini Regis*: M. Fitz. on the other side (in his Nat. Bre. Fo. 81.) holdeth, that such an Obligation taken to the King, by a Iustice of the Peace, is nothing worth: for a man cannot be bound to the King (saith he) but onely by matter of Record, vntlesse he will after ward come into a Court of Record, and confesse it to be his deed, and pray that it may be Enrolled there.

But the new Statute (33. H. 8. cap. 39.) hath made a plaine lawe in these cases, and willeth, that all Obligations and Specialities (made for any cause touching the King) shall be

be made in his owne name, by the wordes, *Domino Regi*, and to none other person to his vse. And it ordaineth further, that such bonds shall be of the nature of a Statute Staple : and that if any person take any obligation otherwise, he shall be imprisoned at the pleasure of the King, or of his honourable Counsell.

The safe way therefore, is to take this Suertie by Recognisance, as is commonly vsed, and that also by the wordes *Domina Regina* : and then (vpon the forfeiture thereof) the Queene shall haue execution accordingly.

Now, if a Recognisance be ment to be taken for the Peace, by a Iustice of the Peace, and yet doe not containe within it (or in the condition thereof) that it was taken For the keeping of the Peace : it seemeth to be voyd, as being then taken *Coram non Iudice* : because a Iustice of the Peace hath not power to take Recognisances generally, but for matters concerning his Office specially. And therefore M. Marrow addeth further, that if the Recognisance be, That the Recognisor shall not maim, nor beate A. yet it is not good, because it ought to be For the keeping of the Peace, and that may bee broken otherwise, as by burning the house of A. or by such like misdemeanour.

Although this recognisance doe not comprehend

prehend any time of apparance, but be generally to keepe the Peace: yet is it good in lawe (saith M. Marrow) bicause the chiefe Scope is, the keeping of the Peace, and the time is referred to the discretion of the Iustice: But, as it was mooued (2.H.7. Fol. 1.) whether the Iustice of Peace ought to bring in the recognisance to the *Custos Rotulorum*, that the partie might be called vpon it: So, by the Statute (3.H.7. ca. 1.) it is plainly enacted, that euery recognisance (take for the Peace) shall bee certified at the next Sessions of the Peace, that the partie may thereby be called, and his default (if any happen) may be recorded. Whereby it seemeth, that euery recognisance of the Peace, ought to containe the apparance of the partie at the next Sessions.

And other wise, there may be some mischiefe. For if the partie shall not so appeare, he is at libertie (without a new arrest) and not forthcomming to be bound ouer, if it be so required.

And (by M. Marrow) if the recognisance containe a day of apparance, and yet haue no person named, before whome the partie so bounden shall appeare: then may he appeare where he will before that Iustice of the Peace which tooke the recognisance of him.

Againe, if the Recognisance be in xx.li. to be leuied onely of the goods, or onely of the lands, of the Recognisor: it seemeth to bee
good

good ynough: for peradventure the wordes,
Of the goods onely, or Lands onely, shall bee
taken to be void, seeing that the very acknow-
ledgement of the summe of xx. li. (before a
Iudge enabled to take it) both maketh it a
debt, and implieth the ordinarie meane of Law
to come vnto it.

So, if this Recognisance bee taken, To
keepe the Peace against one speciall partie
onely, M. Marrow thinketh it good: but aduise
well of it, for the wordes in the Commission
of the Peace be, to take suertie *Erga nos, & po-
pulum nostrum.*

Many other wayes there bee, after which
the Iustice of Peace may walke in taking of
this kind of Recognisance: which, howsoe-
uer they may fall out sufficient to bind the par-
tie vnto the Queene, yet peradventure they
shall not excuse our Iustice of the Peace from
checke and blame: and therefore, for the better
eschewing of all errour in himselfe, and hard
dealing against the partie, I wish him to goe
Regia via, folowing the receiued forme, which
I take to be thus:

Memorandum, quod 4. die Iulij, Anno reg- The forme of
ni Domine nostra Elizab. dei gratia, &c. a Recognisance
29. R.P. de Ightham in comitatu predict. Yeo- for the Peace.
man in propria persona sua venit coram me Ge-
orgio Multon, vno Iusticiariorum dicta Do-
mina
I. j. mina

mina Regine ad pacem in dicto comitatu conseruandam assignatorum, & assumpsit pro seipso sub pœna xx. li. Et H. I. de L. in comitatu predicto. Yeoman : Et I. F. de M. in eodem comitatu Husbandman, tunc & ibidem in proprijs personis suis similiter venerunt, & manuceperunt pro predicto R. P. (viz.) quilibet eorum separatim sub pœna 100. solid. quod idem R. P. personaliter comparebit coram Iusticiarijs dictæ Domine Reg: ad pacem ad proximam generalem Sessionem pacis in comitatu predicto apud Maidlstone tenendam, ad faciendum & recipiendum quod ei per curiam tunc & ibidem iniungetur : Et quod ipse interim pacem dictæ Domine Reg: custodiet, erga ipsam Dominam Reg. & cunctum populum suum, & precipue versus M. N. de Ightham predicta Yeoman, Et quod damnum vel malum aliquod corporale aut gramen prefato M. N. (aut alicui de populo dictæ Domine Regine, quod in laesionem aut perturbationem pacis ipsius Domine Reg: cedere valeat) quouismodo non faciet, nec fieri procurabit : Quam quidem summam xx. libr. predict. R. P. & quilibet manucapitorum predictorum predictas separales summas 100. solid. recognouerunt se debere dictæ Dom. Regina, de terris & tenementis, bovis & catallis suis, quorumlibet & cuiuslibet eorum ad opus dictæ Dom. Reg. heredum & successorum suorum fieri & leuari, ad quorumcunq; manus deuenerint, si contigerit ipsum R. P.

R. P. *pramissa vel eorum aliquod in aliquo infringere, & inde legitimo modo conuinci. In cuius rei testimonium, ego predictus G. M. sigillum meum apposui. Dat. apud Ightham predict. die & An. supradictis.*

Or thus, a little different in forme.

Memorandum quod 4. die &c. A. B. de Ightham &c. Et C. D. de eadem Ycomen, venerunt coram me G. M. &c. & Manuceperunt pro I. S. nuper de L. &c. quod ipse personaliter comparebit coram me prefato G. M. vel socijs meis Iusticiarijs pacis Domine Reg: ad proximam generalem Sessionem, &c. Et quod ipse interim geret pacem erga cunctum populum Domi. Regine, & precipue erga R. B. &c. (viz.) quilibet manucaptorum predictorum sub pœna xx. libr. Et predictus I. S. assumpsit pro seipso sub pœna 40. libr. Quam quidem summam 40. libr. predictus I. S. & quilibet manucaptorum predictorum dictam summam 20. libr. recognouerunt, &c.

And this may be wel done also, by a single Recognisance in Latine, with a condition added or endoyced in English, for the keeping of the peace, and for the day and place of the parties apparance at the Quarter Sessions.

The Suertie (or Recognisance) of the Peace, thus commaunded, and accomplished,

J. ii.

order

What shall be done, with the Recognisance.

order that weth me to disclose, how the Iustice of the Peace is to demeane himselfe with it.

The returne
of a Supplican-
t.

If the Suertie were taken, by vertue of a *Supplicanit*, then must the Iustice of the Peace (being in this case but a Minister) make retourne of the Writ, and a Certificat of his doing, into the Court from whence the *Supplicanit* did proceed: for helpe wherein, I will set him downe that which I haue seene put in practise vpon a Writ of that kind.

First let him note vpon the backe of the *Supplicanit* thus:

Executio istius Breuis patet in quadam Scedula eidem Breui annexa.

Then may that Scedule be thus:

EGo Wilhelmus Lambard, *vnus custodum* Epacis Domina Regina in comitatu Kancia, certifico in Cancellariam dicta Domina Reg. me virtute istius breuis (mihi per A.B. in eodem breui nominatum primo deliberati) personaliter coram me (tali die & loco) venire fecisse Tho: R. in dicto breui nominatum, ac eundem Tho: ad sufficientem securitatem, & manucaptores pacis inueniendum, secundum formam dicti breuis, viz. (as the Writ shal appoint, which is of diuers formes, as I told you before) compulisse: In cuius rei testimonium huic presenti Certificationi mea sigillum meum apposui: Dat. apud D. pradictam, in comitatu pradicto 5. die Iulij
anno

anno regni dictæ Domina nostra Elizab. dei gratia, &c. 29.

And if a *Certiorari* be directed out of the Chancerie to the Iustice of the Peace for removing this Recognisance, because it was not sent by together with the Certificate, (as there was no necessitie that it should) the that Writ also may be thus answered.

Upon the backe of the Writ, thus:

Virtute istius brevis ego W.L. unus custodum pacis Domina Regina in comitatu K. tenorem securitatis pacis (unde infra fit mentio) dictæ domina Regina in Cancellariam suam sub sigillo meo distincte & aperte mitto, prout patet in Scedula huic breui consuta.

The which Scedule may be thus:

Memorandum, quod 20. die Iun. &c. (reciting the whole Recognisance to the end thereof.)

Then, *In cuius rei testimonium ego pradi-ctus W.L. sigillum meum apposui: Dat. &c.*

If the *Supplicavit* be against diuers, and the partie will release his prayer of the Peace against one of them, then that release ought to be certified for him, and the Writ must be serued for the rest, or els, *non est inuentus*, may be certified for him, and the Writ may be serued for the rest.

And this forme may serue also, where a *Certiorari* is brought to a Iustice of the Peace,

to remoue a Recognisance of the Peace that was taken by him *Ex officio*, without any such Writ of *Supplicavit*: as you may read in the Register. Fol. 90.

But if the Recognisance bee not thus remoued from the Iustice of the Peace, then may he keepe it til the *Certiorari* come to him for it.

The certifying of the Recognisance & releafe to the Sessions.

On the other side, if the Recognisance were taken by vertue of his Office, then (whether it were by his owne discretion, or at the sute and desire of another) hee must send or bring it in at the next Sessions, to the *Custos Rotulorum*: so that the Recognisor may bee there called, and if he make default, then the same default to be recorded, as is appointed by the Statute 3. H. 7. cap. 1.

For although the partie that prayed the Peace doe not then appeare at those Sessions, yet is not the default of the Recognisor discharged thereby. 39. H. 6. 26. Bro. Suertie 10. and the Iustices may then of discretion binde him ouer: which also they ordinarily doe in some places, for two or three Sessions together.

And here againe, some difficulties do arise, that may make the Iustice of Peace sometimes doubtfull, how to hold, certifie, or send in, the Recognisance. For sundry means there are, by which this Recognisance of the Peace may

may (before any forfeiture thereof made) be after a sort discharged, and therefore let vs consider them apart, and withall giue some aduise what shall be best to do therein.

The Iustice of Peace, that of his owne motion compelleth one to giue Suertie of the Peace untill a certaine day, may by like discretion before that day release it. Fitz. Fo. 10. And if it should fortune to bee made to keepe the Peace generally, without any day limited, then would it be construed that it was to continue during the life of the partie bound, and then could no man release it, by Fitzh. & 21. E. 4. 40. If (at the suite of A.) the Recognisance should be taken, To keepe the Peace against A. onely and none other: then may A. release it, either before the same Iustice, or any other that will certifie the Release, which certificate (being of Record) will discharge it: but to release it by his deed, is nothing worth, Marrow.

And so, if it be *versus cunctum populum*, & *precipue versus A.*: yet may A. after that sort release it, as the Lawe is now taken in our time, cleane against the opinion of the booke, 21. E. 4. 40. For, albeit that it seeme popular, so that all others should haue equall interest with A. in it, yet was it taken specially (say they) for his safetie, as the word *Precipue* doth argue plaine. And M. Brooke saith truly that

it is so vſed at this day. Peace. 17.

But ſince the recognuſance is made to the Queene, and not to the partie (though for his ſecuritie) and ſeeing alſo that by ſuch releaſe, he that ought to remaine bounden ſhall bee at libertie and may do harme, whileſt (extending to beate B.) hee may collude with A. both to pray and pardon the Recognuſance for the Peace: I could for my part like better, to maintaine that old, then to imitate this newe opinion.

And now, whether the Recognuſance be at the ſuite of A: or by the meere motion of the Juſtice in the behalfe of A: the Queene can not releaſe or pardon it, beſore that it be forfeited: both for the miſchiefe that may come to A. thereby, (by Fineux opinion 11.H. 7.12.) and for that the Recognuſance being taken according to the common forme, as is beſore ſet downe, it is not properly a debt to the Queene, untill it be forfeited, as appeareth 11.H. 4.43: & 1.H. 7.10. But being once forfeited, then ſhe (and none other) may pardon the forfeiture: for then it is become her proper debt.

Now in theſe caſes, the Recognuſance may not be cancelled: leſt peraduenture the Peace was broken (and conſequentially the Recognuſance forfeited) beſore the time of the Releaſe made, Firzh. Fo. 10.

And

And therefore it shall be best, in such cases to send to the Sessions, the Recognisance and the Release together : and that may bee done in a few Lines vnder the Recognisance it selfe.

If first for the release of the Iustice, thus :
Ego prefatus Ioannes Leueson qui supra nominatum A. B. ad predictam securitatem pacis inueniendam ex mea discretionem compuli, eandem securitatem pacis (quantum in me est) ex mea discretionem 1. die August. &c. remisi & relaxavi : In cuius rei testimonium, huic presenti relaxationi mea sigillum meum apposui. Dat. &c.

And for the release of the Partie before the same Iustice that tooke it, thus :

Memorandum, quod primo die Augusti, Release by
 &c. prefatus C. D. venit coram me pre- the partie.
 fato Thoma Fludd & gratis remisit & relaxavit (quantum in se est) predictam securitatem pacis per ipsum coram me versus supra nominatum A. B. petitam. In cuius rei testimonium, ego prefat. T. F. &c. Dat. &c.

But if the release be made (as some thinke it may) before another Iustice which hath not the Recognisance, the this latter forme must be framed accordingly.

Furthermore, if a man be bound before a Iustice of the Peace, to keepe the Peace against
 Certifying of the Recognisance, & Sufferers.

gainst all the Queenes people, and to appeare at the next Quarter Sessions : and doe afterward procure a *Supersedeas* out of the Chancerie, testifying that hee hath found suertie there against all the Queens people for ever : this wil discharge his apparance at the Sessions : because the granting of this *Supersedeas* is the Acte of the Queene, which is the fountaine of Iustice, and controlleth all other deriued authoritie. Fitzh. Fol. 9.

But if that *Supersedeas* should testifie, that he hath found Suertie in the Chancerie, onely untill a certaine day (which day is after those Sessions) then M. Fitzh. thinketh, that his apparance at the Sessions shall not be discharged by the *Supersedeas*. In both these cases also, I would aduise the Iustice of the Peace, to send in as well the Recognisance as the *Supersedeas*, if it come to his hands : for peradventure the Recognisance was broken before the *Supersedeas* purchased : or, if it were not, yet hee shall be excused, and the Recognisor neuer a whit the more endangered thereby.

Certifying of
the Recogni-
sance, though
it be dischar-
ged by death.

Lastly, the death of the Prince dischargeth the Recognisance of the Peace. 1. H. 7. 2. Cur. So doeth the death of the Recognisor, and so also doth the death of him, at whose sute it was taken, if so bee, that it were made to keepe the Peace against him alone.

But, although the Mainpernours or Suerties

ties die, yet the Recognisance liueth: for, if the Peace bee broken after their deaths, their executors shall be charged with it. 21. E. 4. 40. Neither (in the former cases) is the Recognisance discharged by such death, if it were forfeited before.

And therefore, here againe my counsell is, to send in the Recognisance to the *Custos Rotulorum*: for otherwise, how shall the Iustice of Peace be assured, that he doth not defraud the Queene of a forfeiture, that was growen vnto her:

Thus haue I both bound the partie to the Peace, and comieied the Recognisance from the Iustice of the Peace to the *Custos Rotulorum*, ready to be called vpon at the Quarter Sessions: So that I might forthwith proceed to treat of the good Abearing: But, because I haue told you (out of M. Mar. and 21. E. 4. 40.) that if the Recognisance of the Peace be forfeited, and that forfeiture be leuied, so that the Recognisance is vtterly determined, yet (of Discretion) the partie is to bee compelled to find new Suertie, or else to be sent to the prison: because it appeareth euidently, that hee hath broken the Peace: I take it now fit, to run swiftly ouer some fewe things that may enforme a Iustice of the Peace concerning such forfeitures: to the end, that he may thereupon compell the offender accordingly.

Causcs of forfeiture, so that the partie shal be compelled to giue new Suerties.

The

The Condition of this Recognisance (of what good forme soeuer you make it) standeth vpon two points: the one, for apparance at a time: the other, for keeping the Peace in the meane while. Of the first of these I haue sayd somewhat already in this Chapiter: concerning the second point, this is generall, that whatsoeuer Act is a breach of the Peace, the doing thereof doth also beget a forfeiture of the Recognisance that is made for keeping of the Peace. And what acts shall amount to a breach of the Peace, I will hereafter shew, in the next Chapiter of this Booke, where I shal (to another end) haue meeter place for it. In the meane space, take thus much here.

If a man bee bound to keepe the Peace agaynst A: and do after ward threaten A to his face, that he will beate him: he hath forfeited his Recognisance. And an Action of Trespasse lieth at the Common lawe, agaynst him that shall threaten one to beate him: as appeareth in diuers Booke cases 33. H. 6. 18: 37. H. 6. 20. &c. and shall suppose it to be *Contra pacem*. But otherwise it is, if A be not present at that threatning, by good opinion 18. E. 4. 28: yet, if (in the absence of A) he doth threaten, that he will beate him, and then doe after ward lie in awaite to beate him: hee hath in that case also broken his Recognisance 22. E. 4. 35. *Cur.*

Like

Like forfeiture is it, if he that is bound, doe but commaund or procure an other to breake the Peace vpon any man, or to doe any other unlawfull act against the Peace, if that it bee done in deed. 7.H.4.34.& Brooke Tit. Peace 20. *tempore* H.8.

And nowe for closing vp of this part (concerning the Preuention of the breach of the Peace) it remaineth, that I entreat of the Suertie of good Abearing: which is of great affinity with that of the Peace, as being provided for preservation of the Peace, as that other is: for in the Commission of the Peace, they are both conueied vnder this one tracte of speech, (*Ad securitatem de pace, & bono gestu suo, erga nos & populum nostrum inueniendum*) against such as doe threaten hurt to mens bodies, or Fire to their houses: which things are now commonly preuented by Suertie of the Peace onely.

Of the Suertie of the good Abearing, and where it lieth.

And (2.H.7.2.) the Suertie of the good Abearing is set forth to rest in this point chiefly, That a man demeanane himselfe well, in his port, and company, doing nothing that may be cause of the breach of the Peace, or of putting the people in feare, or trouble: and that it doeth not consist in the obseruation of things that concerne not the Peace: And that it should differ from Suertie of the Peace, in this, that where the Peace is not broken without

without an affray, or batterie, or such like, this Suertie *de bono gestu*, may be broken by the number of a mans company, or by his or their weapons, or harnesse. Herewithall also do certaine Precedents of the Kings Bench agree, which in Suertie of the good Abearing (taken at the sute of some one person) do mingle the words, *A modo bene se geret erga Dominum Regem, & cum eodem populum suum, & precipue erga T. B.* with those other words that are commonly put in the Recognisance for the Peace, as in the new Booke of Entrees, Fol. 416. any man may plainly see.

But all this notwithstanding, me thinketh that a man may reasonably affirme, that the Suertie of good Abearing, should not bee restrained to so narrow bounds.

For first, the Statute (24. E. 3. c. 1.) enableth the Wardeins of the Peace, to take of al them that be not of good fame (where they shall bee found) sufficient suertie and mainprise of their good Abearing towards the King and his people. So that, if a man be defamed, he may by vertue hereof be bound to his good Behaviour, at the discretion of the Wardeins and Iustices of the Peace. But then the doubt resteth in this, to vnderstand concerning what matters this defamation must be: and that (as I think) may be partly gathered out of the said Statute also. For, after it hath
first

first giuen power to the Wardeins of the Peace, to arrest and chastise offenders (S. against the Peace, Riottors, & Baretors) then it willethe them, to enquire of such as hauing bene robbers beyond the Sea, were come ouer hither, & would not labour as they were wont: and lastly, it authorizeth them, to take Suertie of the good behauiour of such as bee defamed, namely (as I thinke) for any of those former offences: for so it standeth well together, that they shall both punish such as haue already so offended, and shal also prouide, that others shall not likewise offend.

Moreouer, it seemeth to me, that all these statutes, first (1. Mar. Parl. 1. cap. 3.) which gaue this Suertie of good Abearing agaynst such as disturbed a Preacher: then (5. Eliz. c. 21.) that prouideth the same against the takers of fish in Pondes, or of Deere in Parkes: and lastly (23. Eliz. c. 1.) which granteth it against such as wilfully absent theselues from the Church by the space of 12. months: haue this one meaning, that a partie (so bound) may afterward forfeit his Recognisance, if he euen soones offend against the sayd Statutes.

Besides this, you may see (admitted by the opinion of the Court. 13. H. 7. 10.) that if a man in the night season, haunt a house that is suspected for Bawderie, or vse suspicious company, then may the Constable arrest him to find suertie

suertie of his good Abearing. For, Bawderie is not meereley a spirituall offence, but mixed, and sounding somewhat against the Peace of the land, 27.H.8.14.Fitz.& 1.H.7.6.

And therefore, it shall not be amisse at this day (in my slender opinion) to graunt Suertie of the good Abearing agaynst him that is suspected to haue begotten a Bastard childe: to the end that he may be forth comming when it shall be boyme: for otherwise, there will be no Putatiue father found, when that the two Iustices of the Peace, shall (after the birth, and by vertue of the Statute, 18. El.ca.3.) come to take order for his punishment.

And if this medicine might lawfully bee applied to those light persons also, that (without testimoniall, or other good Warrant) doe flit out of one shire into an other: not only that euill of Bastardie, but many other mischiefs, might be, either preuēted, or punished thereby.

But, for some aduise (by the way) in conceiuing rightly this Suspicion, marke what M.Bracton writeth: *Oritur suspicio ex fama, & ex fama & suspicione, oritur gravis presumptio: Fama vero suspicionem inducens, oriri debet apud bonos & graues, idq; non semel, sed sepius. Oritur etiam suspicio, ex facto precedenti, cui standum est donec probetur contrarium: nam qui semel est malus, semper presumitur esse malus in eodem genere mali.*

But

But the further that this bond of the good Abearing doth extend, the more regard there ought to be taken in the awarding of it : and therefore, although the Iustices of the Peace haue power to graunt it, either by their owne Discretion, or vpon the Complaint of others, euē as they may that of the Peace: yet I wissh rather, that they do not commaund it, but only vpon sufficient cause seene to themselves, or vpon the sute and complaint of diuers, and the same very honest and credible persons.

And here, forasmuch as one Iustice of the Peace (alone, & out of the Sessions) may (both by the first Clause of the Commission, and also by the opinion of M. Fitzher. & 9.E.4.3.) graunt this suertie of the good Abearing, (although the common maner be, that two such Iustices do ioine in that doing, wherof also M. Fitzh. hath very good liking) I wil not sticke to set forth the common formes, as well of the Precept, as of the Recognisance for the same : wherein, if I shal vse the names of two Iustices, you must take that also to be done according to the common fashion, and not of any necessitie in Law.

For, as I would more gladly vse the assistance of a fellow Iustice in this behalfe, if I may conueniently haue it : so (if that may not be gotten) I would not greatly feare (when good cause shall require) to undertake the

K. i. thing

The Precept may haue this course.

The Precept
of the good
Abearing.

Anyone of
these, is suffi-
cient cause.

EDWARD NEVELL and WILLIAM
SESDLEY, two of the Iustices of the
Peace of our Souereigne Lady the Queenes
Maiestie, in the Countie of *Kent*, To the Shi-
rife of the said Countie, to the Constables of
the Hundred of *Wroteham*, and to the Bors-
holder of the Towne of *Shipborne*, in the said
Countie, and to euery of them, greeting: For
as much as *A.B.* of *Shipborne* aforesaid, is not
of good fame, nor of honest conuersatiō (but
an euill doer, Riotter, Barrettor, and pertur-
ber of the Peace of our sayd Souereigne La-
die) as we are giuen to vnderstand by the re-
port of sundry credible persons. Therefore,
on the behalfe of our sayd Soueraigne Ladie
we commaund you, and euery of you, that
you cause the sayd *A.B.* to come before vs,
or some others of our fellow Iustices, to find
sufficient suertie and mainprise for his good
Abearing towards our sayd Soueraigne La-
die, and all her liege people, vntill the next
quarter Session of the Peace to be holden at
M. in the sayd Countie, as also for his ap-
pearance then there. And if he shall refuse so
to doe, &c. as in the Precept of the Peace
with a very little or no change.

The vsual Recognisance hath this forme.
Me-

Memorandum quòd 5. die mensis Iulij, An. The Recog-
 regni Elizab. & c. 30. venit coram nobis nufance for
 Edw. Neuell, & Wil. Sedley, & c. vt antea in the good A-
 Recognitione pacis, vsque ad hoc: Quòd idē bearing.
 R. G. personaliter comparebit coram Iusticiarijs
 dictæ Dom. Reg. ad Pacē, & c. ad proximam ge-
 neralem Sessionē, & c. Et quòd ipse interim se be-
 ne geret erga Dom. Regina & cunctum populum
 suum, et prapciue erga I. B. de C. & c. Et quòd ipse
 non inferet, nec inferri procurabit, per se nec per
 alios, damnum aliquod seu grauamen prefato I.
 B. seu alicui de populo ipsius Domina Regina de
 corporibus suis, per insidias, insultus, seu aliquo
 alio modo, quod in lasonem seu perturbationem
 pacis dictæ Domina Regina cedere valeat quo-
 nismo: videlicet vterque predictorum H. C.
 & I. S. sub pœna 100. li. Et predictus R. G. sub
 pœna 200. li: quas quidem separales summas
 100. li. vterq, predictorum H. C. & I. S. (vt
 predicatur) per se, ac predictus R. G. dictas, 200.
 li. recognouerunt se debere dictæ Domina Regi-
 na, de terris, & tenementis, bonis & catallis su-
 is, & quorumlibet, cuiuslibet eorum, ad opus ipsi-
 us dictæ Domina Regina, fieri & leuari, Si con-
 tingat prefatum R. G. in aliquo premissorum
 deficere, & inde legitimo modo conuinci, & c.

By a simple Recognufance, with this
 Condition endoyced, or vnderwitten.

Conditio Recognitionis predicta talis est,
 Quòd si predictus R. G. imposterum se
 K. ij. bene

benegeret, & pacem Domina Regina conseruabit, erga dictam Dominam Reginam, & cunctum populum suum, & nullum damnum corporale &c. Extunc Recognitio predicta pro nullo teneatur, alioquin in suo robore permaneat.

Release of the
good Abearing.

I haue knowen it doubted, whether the Suertie of the good Abearing (commanded vpon complaint) may be released by any speciall person, or no: because it seemeth more popular, then the Suertie of the Peace. But if it may (as it seemeth all one to me) then may the forme of such a Release be easily made, by that which is before concerning the Peace, vsing the wordes, *Securitatem de se bene gerendo*, in stead of the wordes, *Securitatem pacis*.

And the like imitation may be vsed also, for a *Superfedeas* of the good Abearing, if at the least that bee grauntable by Iustices of the Peace.

I might here without breach of Order, prosecute the preservation of the Peace, by the preuenting of such as be riotously assembled, and by handling the Statute of Northampton, which seemeth (by plaine speech) to be provided for preuention of the breach of the Peace also: But because the first shal haue his proper place, and the latter is commonly put in vse at this day after the Peace brokē by forcible Entertrie, I wil spare to speake of any of them, til I come to treat of those matters by themselves.

Of

Of the breach of the Peace

without a *multitude*, against the
person, and how it may be staied,
or punished by any one Iu-
stice of Peace out of
the Sessions.

CAP. III.

The preuention of the breach of the Peace hath appeared, as wel in the
Suerie of the Peace, as of the good
Abearing: and therfore mine owne
order requireth, that I now declare what one
Iustice of the Peace, may doe (out of the Sessi-
ons) for punishment of such as doe breake the
Peace.

Breach of the
Peace with-
out a *multi-
tude*.

If our law is no lesse carefull this way to
conserue the Peace, both by staying them
that do any way aduerture towards the breach
thereof, and by punishing them that do actual-
ly enter into the very violation of the same,
then it was prouident to see it preserved be-
fore it came to any neere shew of disturbance,
or greater euill.

But because the breach of the Peace (as
the law is taken at this day) whether it be by
word, or other act, (and that also whether it be
to the person, or to his goods, or lands) may be
as well committed by one only, or by two up-
on a side (both which we hold to be done with-

out a multitude, though two imprecise speach do make a number) as by three or more in one companie (which the lawe properly calleth a multitude,) it shall be good to entreate by it selfe, first of that breach of the Peace which may be committed without a multitude, and then to prosecute the other, if before all wee giue the Iustice of Peace to vnderstand, that by what way soeuer he may prevent or punish the breach of the Peace in one person, the same means he may also vse against any multitude offending therein.

The breach of the Peace that may be practised against the person, climbeth to the destruction of the person, by sundry steps & degrees: as by Threats, Affray, (or Assault) violent and malicious striking, beating, wounding, maiming, & killing. The matter of manacing and threatning is already handled in y^e last chapter.

Affray and
Assault.

The words Affray and Assault, be indifferently vbled of most men, and that in some of our booke cases: but yet in mine opinion there wanteth not a iust difference betweene them.

If Affray, is deriued of the French *effraier*, which signifieth to terrifie, or bring Feare, and is the more hainous trespass: for the law vnderstandeth it to be a common wrong; and therfore is it inquirable and punishable in the Turne of the Shirife, and in a Leete, 4.H.6. 10: and 8.E.4.5. Otherwise it is of an assault,

as

as it seemeth by those very bookes.
 Yet may an affray be without word or blow
 giuen: as if a man shall shew himselfe furni-
 shed with armour or weapon, which is not usu-
 ally woyned and boynd, it will strike a feare in-
 to others that be not armed as he is: and ther-
 fore both the Statute of Northampton (2. E. 3.
 ca. 3. made against the wearing of Armour
 and weapon) and the Writ thereupon ground-
 ed, doe speake of it, by the words, *effray del*
pais, and, *in terrorem populi*.

But an Assault, as it is fetched from an o-
 ther fountaine, namely from the Latine *Assal-*
tus, which denoteth a leaping (or flying) vpon
 a man: So can it not be performed, without
 the offer of some hurtfull blow, or at the least
 of some fearefull speech. And therefore, to re-
 buke a Collector with foule words, so that he
 departed (for feare) without doing his office,
 was taken for an Assault, 27. lib. Ass. Pl. 11.
 And to strike at a man (although he were nei-
 ther hurt, nor hit, with the blowe) was adiu-
 ged an Assault, 22. lib. Ass. Plac. 60. For this
 Assault doth not alwayes necessarily em-
 plie a hitting: and therefore, in Trespasse of Assault
 and Batterie, a man may be found guiltie of
 the Assault, and yet be excused of the Batterie:
 40. Ed. 3. 40: and 45. Ed. 3. 24.

Manacings then, Affraies, Assaults, iniuri-
 ous and violent handlings & misentreatings
 R. iiii.

What acts be
 breaches of
 the Peace, &
 of what not.

of the person, batteries, malicious strikings, &c. be breaches of the Peace, and do draw after them the forfeiture of a Recognizance, knowledged for the keeping of the Peace.

And therefore (for example) if a man do imprison an other without warrant: or do thrust him into a water (or riuer) whereby hee is in danger of drowning: or do rauish a woman against her will: or do commit manslaughter, or burglarie, or robberie, vpon the person of an other: or doe commit treason against the person of the Prince, who as he is the head of his people, so are they also wounded in his hurt: he hath broken the Peace: Mar.

But concerning the manacing, assault, or batterie of the person, this is to be noted by the way, that it is not in all cases a violation and breach of the Peace: for some are allowed to haue privately, a naturall, and some a Civile power (or authoritie) ouer others: so that they may (in reasonable maner onely) correct and chastise them for their offences, without imputation of any such breach. After the one sort, the parent is suffered (with moderation) to threaten and chastise the childe within age. By reason of the other sort of power, the master is not punishable, if (not outragiously) he chastise his seruant, the Scholemaster his Scholers, or a Gaoler (or his seruant, by his commandement) his unruly prisoners, or the

Lord

Lord his Villaine. But these things must nevertheless be done in convenient place, and therefore not in the presence of the Prince, as it is thought, 27. lib. Ass. Pl. 49.

And this power of the Master and Scholemaster, ouer the Seruant and Scholer, is affirmed by M. Morrow, and confirmed by some opinion in the booke, 21. E. 4. 6. & 53. Wherinto I may also adde the mind of those that made the Statute (33. H. 8. cap. 12.) concerning malicious striking in the Kings house: for they do therein specially exempt the Master that striketh his Seruaunt, with his hand, fist, small stasse, or sticke, in way of correction for his offence.

Euery man also may take his Kinsman that is mad, and may put him in a house, and bind and beat him with rods, without breach of the Peace, 22. lib. Ass. Plac. 56.

A Constable, or other Officer, or any other, being of their company, that shall be dytuen to strike any person, for the better executing of their Office, or charge (as in many cases they may lawfully do) breaketh not the Peace, nor shall be in perill to forfeit any Recog. of the Peace, by reason of any such assault or batterie, as may wel be inferred vpon the booke cases 17. E. 4. 5. 2. E. 4. 6. & 8. 4. H. 7. 1. & 14. H. 7. 8. For such Acts, be iustificable. And see for this purpose also, M. Stamford. Fo. 13. 14. 15.

Besides

Besides this, if a man be enforced to repulse violence (done unto his owne person, or to the person of his wife, father, mother, childe, master, or seruauit, or to his goods being in his possession) either by theatning, or striking againe, his so doing is also iustificable, as may be seene in Marrow: 33. H. 6. 18: 19. H. 6. 31: 9. E. 4. 48: & 35. H. 6. 50. But a Farmer, or Tenant, cannot iustifie such an act in defence of his Landlord: nor a Commoner in defence of the Mayor (or the Bailifs) of a citie, or towne corporate.

If one man also kill, or hurt an other at Fenceplay, or at the Tilt, Torneament, or Barriers (in presence of the Queene, & by her commandement, or licence) it is no breach of the Peace: 11. H. 7. 23. Fineux: But M. Brooke saith (*Corone*. 228.) that the Iudges were of another opiniō, in the time of R. H. the 8: because such a licence, or commandemēt, is against the law. Whose allowablie therfore writeth Marr. that it breaketh not the Peace, to kill a man, in a Wager of Battaille, for triall of a cause according to the ancient law of our countrey.

Breaches of the Peace, that make no breach of bond for the Peace.

Thus far of those breaches, that may bring danger to a Recognisance of the Peace: for some others there be, which are (in a degree) against the Peace, so that an Enditement *Contrapacem* may be found vpon them, and yet no forfeiture of such a Recognisance, shall ensue

ensue of the. For the act, that shal breed such a forfeiture, must be done vnto the person. Mar.

Therefore, if a man (so bound) doe take a mans goods wrongfully, (so that it bee not from his person) or do Raviſh or take, an other mans Warde: or doe a Trespasse in another mans Copie, or grasse: or do Disseise another of his lands: or do enter into lands, where he ought to bring his Action: it will breede no forfeiture of his bond.

Let vs now come to the pacifying and punishing of the Breach of the Peace, vpon the person, by one Iustice of the Peace out of the Sessions.

A Iustice of the Peace, is undoubtedly (for this purpose) endued with no lesse power, then euery Priuate man, or any Constable hath: as it is plain by 14. H. 7. 8. & 9. E. 4. 3. And therefore, it may not be thought *Heterogeneous* (or besides my purpose) if I shall shew what both a Priuate man & Constable may do in this case: yea rather I choose to utter this matter vnder their names, to the ende that I may with that one labor bewray the duties, both of them & of the Iustice of the Peace himself in this behalf.

The Law looketh, that euery Priuate person, whome it shall happen to be present at an Affray, Assault, or Batterie, (for now I will with other men confound those names) should do his part to depart them that fight together:

and

The dutie of
a stander by
at an Affray.

and it doeth (to that end) enable him also with some portion of authoritie.

To part them. For, if two be fighting, every Stander by, may lawfully, and shall doe well to put them in sunder: and if he take hurt thereby, he shall haue his remedie by Action against him that did the hurt.

But yet he (being but a Priuate man) may do no hurt, if they resist him: for they also shall then haue Action for it agaynst him: wherein his case differeth (as you shall see anon) from the case of an Officer.

And if an Affray be in the high streete, and one cometh towards it with harnes or weapon, to ioyne with the one or other partie, every man that seeth it may stay him till the Affray be ended.

To stay them. Any man also may stay the Affrayers, untill the storme of their heat be calmed: and then may he deliuer them ouer to the Constable to imprison them, till they finde Suertie for the Peace: but he himselfe may not commit them to prison, vnlesse the one of them be in perill of death by some hurt: for then may any man carrie the other to the Gaole, till it bee knownen, whether he so hurt, will liue or die, as appeareth by the Statute, 3. H. 7. ca. 1.

And if (in that case) he which did the harme do flee into an other mans house, yet may any man (that followeth him vpon Huie and Crie made)

made) breake open the house, and enter, and take him. 7.E.3. Fitz.Barre.291.

Now, that it is not onely lawfull, but commaunded also, that the Stander by doe shew his best endeavour in these cases, it appeareth (Corone Fitz. 395.) that one which stood by, and looked on, whilest a man was slaine, was imprisoned till he made Fine, because he did not bestirre him to attach the Murderer.

But, as the keeping of the Peace is more specially recommended to the charge of Iustices of Peace, Constables, petit-Constables, Borsholders, Tithing men, and such like Officers: so be they also to that end armed with a larger measure of authoritie. And therefore, if a Constable, or such other Officer doe see a man, endeavouring to make an Affray, he may commaund him to auoid, vpon paine of imprisonment: and if the Affray be great, or dangerous, he may make Proclamation, and may commaund the parties to prison for a small time, till their heate be passed ouer, and then hee must deliuer them without any fine taking. But if two do vse onely hote words one agaynst the other, the Officer may lay no hands vpon them, vnlesse they doe also drawe weapon, or doe otherwise offer to strike: If they once fight togither, then may the Officer depart them, and if he hap to be hurt in that doing, he shall haue an Action of Trespasse for it:

*The Officers
duetic in an
Affray.*

it: but if any of them be hurt by him in the resistance, no Action lieth for them: For the Officer ought to do his best to depart them: in so much as if it be presented at the Sessions of the Peace, that he was present at an Affray, and did not vse his indenuour to put them in sunder that fought together, he shall be deeply fined for it: Otherwise it is, if he were not present, but were only told of the Affray, Marr.

If any of the parties be in danger, by reason of a hurt receiued in the Affray, then ought the Officer to arrest and carie the other to the Gaole, vntill he shall find suertie to appeare at the Gaole deliuerie. Fitzh. 72: 38. E. 3. 6: & 22. lib. Ass. pl. 56.

And if two men be fighting in a house (the doores shut) then may the Officer breake open the doores to see the Peace kept, though neither of them haue taken hurt.

And yet when the Constable hath taken an Affrayor, he may not imprison him in his house, but in the Stockes: and that, not aboue such a reasonable time, as he may prouide to conuey him to the Gaole til he find suertie for the Peace, 3. H. 4. 9: & 22. E. 4. 35.

And herein he differeth from a Gaoler, or the Shirife (who hath the charge of the Gaole) for he may make a Gaole of his house: and so cannot a Constable or Iustice of the Peace do. For by the Statute (5. H. 4. c. 10.) the Iustice of

of Peace must send his prisoners to the common Gaole. And you may read (Britt. Fol. 72) that the Shirife in his Turne vsed to enquire of those which made Prisons in their houses.

If one doe make an Affray vpon a Iustice of the Peace, Constable, or such other Officer, he may not onely defend himselfe, but may also apprehend the offendour and send him to the Gaole, till he will find suertie of the Peace, 5. Hen. 7. 6. And the Iustice, or Constable may (if need be) commaund assistance of the Queenes people, for the pacifying of an Affray, 3. H. 7. 10.

If he that maketh an Affray doe flie into a house when the Iustice of Peace (or Constable) commeth to arrest him, they also may (in fresh sute) breake open the doores, and take him, Mar: or if he flie thence, they may make fresh sute and arrest him, though it be in an other Countie: by the opinion of some men 13. E. 4. 9. And it should seeme (by the reason of that Booke) that in this case also, they may breake open the doores to apprehend him: because the Prince hath an interest in the matter, & then a mans house shal be no refuge for him, as it should be in Debt or Trespasse, where the interest is but only to some particular subiect.

Now, if the Constable doe arrest one, that hath hurt an other, and doe voluntarily suffer him to Escape, and then he that was hurt dieth thereof

thereof within the yeare and day, the Constable shall make a great Fine, and that to the value of his goods, in the opinion of some, 1 R. H. 4. 12 : & Stanford 35. But yet the offence shall not haue such Relation to the Stroke, as to make the escape to become Felonie thereby : *Commentar. Plowd. 263.*

Of the breach of the Peace,

without, or with, a multitude, by forcible entrie into lands or tenements, &c.

And what any one Iustice of the Peace (out of the Sessions) may doe therein.

CAP. IIII.

It seemeth, that (before the trouble some reigne of King Richard the second) the common Lawe permitted any person (which had good right or title to enter into any land) to win the possession thereof by force, if otherwise he could not haue obtained it.

For, a man may see (in Britton, Fol. 115.) that a certaine respite of time was giuen to the disseisee (according to his distance, and absence) in which it was lawfull for him to gather force, armes, and his friends, and to throw the disseisor out of his wrongfull possession.

And

And at this day, if (in a common Action, or enditement, of Trespas for entring into land) the Defendant will make Title thereunto, the matter of the Force alleaged against him will rest altogether vpon the validitie of his Title, as appeareth 7.H.6.13. and 40.

But, after the rebellious tumulte, and insurrection of the villains, and other the base commons, which happened in the 4. yeere of that Kings reigne, the Parliament (5.R.2. ca.7.) thinking it necessarie to provide against all such occasions of further sedition, byvoate, and breach of the Peace, did ordaine among other things, That from hencefoorth none make any entrie into any lands and tenements, but in case where entrie is giuen by the law, and in such case not with strong hand, nor with multitude of people, but onely in peaceable and easie maner: vpon paine (if he bee duly conuict thereof) of imprisonment, and to be ransomed at the Kings will.

But because that Statute provided no speedy remedie in this point: nor extended to holding with force: nor left any speciall power therein to the Iustices of Peace in the countrie: whereas the experience of that vniquiet time required a more readie hand to the suppression of such disorder: and Iustices of the Peace were (by 13.R.2. Stat.1. cap.7.) then newly chosen in all the Counties of England,

thereof within the yeare and day, the Constable shall make a great Fine, and that to the value of his goods, in the opinion of some, 11. H.4.12 : & Stanford 35. But yet the offence shall not haue such Relation to the stroke, as to make the escape to become Felonie thereby : *Commentar. Plowd. 263.*

Of the breach of the Peace,

without, or with, a multitude, by forcible entrie into lands or tenements, &c.

And what any one Iustice of the Peace (out of the Sessions) may doe therein.

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L. j.

land,

land, of the most sufficient Knights, Esquiers, and men of law of the same, and sworne to put in execution all the ordinaunces touching their offices: Therefore (15.R. 2.cap. 2.) it was further enacted, That whē such forcible entrie should be made into lands or tenements, or into Benefices, or Offices of the Church, and complaint thereof come to any Iustice of the Peace, he should take sufficient power of the Countie, and goe to the place where such force was made: and if he found any that held such place forcible after such entrie made, the same should be taken & put in the next Gaole, there to abide, conuicted by the Record of the same Iustice, till they had made fine, and raunsome to the King: And that as well the Shirife, as all others of the Countie, should attend vpon the said Iustice, to go and strengthen the same Iustices to arrest such offendours, vpon paine of imprisonment, and to make fine to the King.

But now agayne, forasmuch as this last Statute did not extende to those that entred Peaceable and then held with Force: nor yet reached to the offendours if they were remoued before the comming of the Iustices: nor made restitution of the possession so forcible gotten: nor gaue any pain against the Shirife that did not obey the precepts of the Iustices in this behalfe: it was not onely ordeined by a third Act

Act (made 8.H.6. cap.9.) That the said former Statutes should be holden and duly executed, But it was adioyned also therunto, That if any from henceforth inake such forcible entrie into lands; tenements; or other possessions: or them hold forcibly: after complaint thereof made within the same Countie to any of the Iustices of the Peace there by the parties griued; the Iustices or Iustice so warned shal in conuenient time cause the last sayd Statute duely to be executed at the costs of the sayd partie so griued.

And whether the persons (making such entries) be present or auoided before the Iustices comming: the same Iustices (or Iustice) in some good towne next to the sayde tenements; or in some other conuenient place at his discretion, shall haue power to enquire by the people of the same countie, as well of them which made such forcible entries into lands or tenements; as of them which helde the same with force: And if it be found before any of them; that any doeth contrary to this Statute, then the said Iustices (or Iustice) shall doe the sayd lands or tenements to be releised, and shall put the partie (so put out) in full possession of the same. And when the sayd Iustices (or Iustice) make such enquire, they shall direct their Precept to the Shirefe, commanding him on the Kings behalfe,

to cause to come before them and euery of them, sufficient & indifferent persons, dwelling next about the same lands or tenements, whereof euery man shall haue lands or tenements of the cleare yeerely value of fourtie shillings at the least, and the Shirife shall returne twentie shillings in issues vpon euery one of them at the first Precept returnable, and at the second fortie shillings, and at the third five pounds, and at euery day after, the double. And euery Shirife of Countie, and Bailife of Franchise, that shal not duly make execution of the sayd Precepts, shall forfait to the King twentie pounds for euery default, and shall moreouer make fine and ransom to the king. And as well the Iustices (or Iustice) afore sayd, as the Iustices of Assises, may heare & determine such defaults of Shirifes or Bailifes, as wel by Bill at the suite of the partie griued for himselfe, as for the King onely by way of Enditement: and vpon such due attander, hee which sueth for himselfe and for the King, shall haue the one moitie of the said twentie pounds, together with his costs and expenses: and such Prozesse shall be agaynst such so endited, or sued, as lieth agaynst any person endited, or sued, by writ of Trespasse with force & Armes agaynst the Peace. And the Maiors, Iustices, or Iustice of the Peace, Shirifes and Bailifes, that

that are in Cities, Townes or Boroughs (ha-
uing Franchise) shall haue like power there
in the articles aforesayde, as the Iustices of
Peace, and Shirifes in the Countie haue.

But they which keepe by force their pos-
sessions in any lands or tenements, whereof
they or their auncesters, or they whose estate
they haue therein, haue continued their pos-
session in the same by three yeeres or more,
shall not be endamaged by force of this Sta-
tute.

This last Statute I haue exemplified the
more at large, for that it deliuereth a full di-
rection in this businesse. Besides the which,
seeing that I haue met with some other notes
that tend to the explanation of sundry points
thereof, and seeme not vnmeet to bee conside-
red, I will not let to bestow them here also.

This Statute (8.H.6.) enableth any one
Iustice of the Peace, to giue remedie in this
hurt of Forcible entrie and holding: and is
made, as wel against such as enter with Force
and hold then Peaceable: and agaynst those
that enter in Peaceable sort, and then main-
taine their possession Forcibly: as also against
as many, as do both Enter and Hold in Forci-
ble maner. Fitz. Nat. Bre. 148: & 3.E.4. 19.

And therefore, it is expedient for the Iustice
of the Peace to know, first, what is a Forcible
entrie, and what is a Forcible holding, with

in the meaning of these Statutes : and then, how he shall demean, and carie himselfe in the execution of his office against those that shall offend herein.

Two sortes
of Force.

Even as the *Civilians* do handle two sortes of Force : of which they call the one, *vim*, and *vim simplicem, priuatam, siue quotidianam*; and the other, *vim armatam, atrocem, & publicam*: because the first is voide of any fearefull outrage, & the latter seemeth to kindle the coales of sedition it selfe : So likewise, our Lawe taketh knowledge of two maners of Force : whereof the one is rather intellectuall then actuall, and may therefore be termed, a Force in the consideration of Lawe, which accounteth all that to be *Vis*, which is contrary to *Ius* : But the other is apparant, by the acte it selfe, which alwayes carrieth some fearefull shew, and matter of terror, (or trouble) with it.

And therefore, if I do but ha' wake, or walke, (for my pastime, or recreation) ouer an other mans ground, he may haue his Action of Trespasse against mee, *Quare vi, & armis, &c.* For, though I meant no harme to him, or his, yet (in iudgement of Lawe) I might not (in such case) passe vpon his ground without licence. But this is not that Force, that needeth the helpe which is prouided by these Statutes : for (34.H.6.26.) a writ vpon the Statute (1.R.2.cap.7.) was disallowed, because

it contained, *Vi, & armis*, onely.

Againe, if a man doe enter vpon the freehold of an other, and doe there fish the waters with an angle, or cut downe the grasse with a sicke, or fel the trees with an axe, or take away any of his goods in his absence: this is accounted a disseisin with Force, and armes: Lib. Ass. 11. pl. 26: 11. H. 4. 16. Affise. Fitzh. 301: & 21. E. 3. 34: And yet, I doubt also whether any of these be of themselves Forcible entries of that nature, which these Statutes doe take in hand to punish. If or, albeit they haue in them more actuall Force, then those other trespasses whereof I spake last before: yet, whilst the doer of them neither executed apparant violence against any person, nor is furnished with weapon, nor armed with company, that may offer any dreadfull disturbance, I see not how these Statutes (which haue for their onely marke, strong hand, and multitude of people) can hurt, or so much as hit him.

So that, if a man were endited vpon this Statute (8. H. 6.) for that he disseised another, *Vi, & armis*, (viz. *g. ladijs, &c.*) without saying, *manu forti, &c.* or, *cum multitudine, &c.* the Bill (as I thinke) would be insufficient: vilesse it were holpen by concluding after ward, *contra formam Statuti predicti*, or by some other matter that implied so much. Therefore,

*Paulo maiora canamus :*Forcible en-
trie.

If one, or moe persons, shall come weaponed (especially with weapons not vsually borne, as Bowes, Bils, Guns, or such like) to a house, or land, and shal violently enter thereinto, this is a forcible entrie within the meaning of these Statutes: much more, if he, or they shal there offer violence, or feare of harme, to the person of any that is in possession thereof: and most of all, if he, or they, shall forcible and furiously expell, and driue an other, out of such his possession.

And, albeit that of thre (or foure) which come (in one company) to make such a forcible entrie, onely one of them doeth vse force, and violence, yet are all the rest also guiltie of this force with him. Fitz. Imprison. 22. Neither is it denied (10.H.7.12) to bee a forcible entrie, when the Master entreth, being attended with a greater number of seruants then vsually doe waite vpon him. If or, whether a man doe actually vse force in his entrie, or doe come so readily appointed, and araied for it, that other men may reasonably be afraid that he mindeth to make his way by force, rather then he will faile of his desired purpose, it seemeth to weigh to a violent, (or Forcible) entrie.

And I thinke there be no great doubt, but that one person alone, may commit a forcible entrie:

entrie : if so be that he doe performe it with offensive weapon, or doe vse turbulent behaviour to the assay of another . But, what weapons be offensive, in these, and the like cases, a man shall the better discern, if hee will take with him these few Lines drawn out of B. Bractons booke, Fol. 162 : *Est etiam vis armata, non solum si quis venerit cum telis, verum etiam omnes illos dicimus armatos, qui habent quocum nocere possunt : Telorum autem appellatione, omnia in quibus singuli homines nocere possunt, accipiuntur . Sed si quis venerit sine armis, & in ipsa concertatione ligna sumpserit, fustes, aut Lapides, vis dicetur armata . Si quis autem venerit cum armis, armis tamen ad deicendum non usus fuerit, & deiecerit, vis armata dicetur esse facta : sufficit enim terror Armorum, ut videatur armis deiecisse .*

Furthermore, if a man that hath a rent issuing out of Land, shall distreigne for the same with force, this will counterwaite an Entrie with force : and much more, if he shall by such forcible distresse leuie a rent that is not due to him, but to another man. 20. H. 6. 11. & Lib. Ass. 43. pl. 6 : for, action vpon the Statute of Forcible entrie lieth for a rent : 22. H. 6. 23.

But now, if diuers persons shall make a forcible entrie to the vse of an other man (that is not then present with them, but afterward agreeth thereunto) this shall not charge him
for

Forcible
holding.

for the Force, howsoever he may become a disseisour by it: for (as it is sayd, 2.H. 7. 16.) a forcible entrie cannot be adiudged agaynst a man, without an actuall entrie be also made by him.

Thus farre of Forcible entrie, which may somewhat lead a man towards the knowledge of deteining, (or holding) with Force also: but yet, because the matter will best appeare by particularitie, I will ensue it.

If a Iustice of the Peace come to the house, (that is supposed to be holden with Force) and there findeth but one person, which keepeth the dooze shut, and will not suffer him to enter: this is a Forcible holding, Marrow. So is it, if when the Iustice entreteth the house, hee shall find persons harnessed, or in other warlike sort appointed, or hauing such furniture lying ready in the house to be vsed by them: Marrow. But if a man shall Peaccablie enter into a house, wherein he findeth armour, or weapon for the warre, then (as I thinke) the only suffering of it to remaine there (without the vse thereof) will not charge him as a Forcible holder.

Againe, if a man that is entred into a house, will bestow men, with force and armes, in some other house (not farre distant) to the intent that they shall be readie to assault such as shall make any attempt of entrie vpon him: this

this is a deteining with force, Marrow. And (for the same reason) it seemeth to bee a forcible holding, if a disseisor of a house, or Land, shall forestall the way of the disseisee (with force and armes) so that he dare not enter, or appoach for feare of death. Seeing that in either case, the lawfull meane of comming to his possession, is quite taken from him: Like as if a man haue a rent, or commune in Land, and he is so forcible resisted by the Tenant of the Land, that he dare neither distreigne for the one, nor vse the benefite of the other: this is a holding with force, punishable by this Statute, Marrow: & Lib. Ass. 29. pl. 49: Besides this, some haue thought, that if he which hath gained a possession, shall threaten to kill him (that hath right) if he come to enter, this shall amount to a Forcible holding.

But, all that is here sayde touching this point, must be taken to be sayd of a forcible deteining, of the possession it selfe, and not of the person. For (as Marr. writeth) if I shal take a man (being out of his house) and then put into the house a seruauit of mine owne, in peaceable maner, and hold away the other by imprisonment of his person in some other place: this is no forcible deteining within the purpose of these Lawes: but a false imprisoning punishable by action at large.

We come now to the office of the Iustice of Peace,

Peace, in these Forcible entries, & holdings: and that standeth first, either in recording the force by his owne view, or in seeking to vnderstand thereof, by the oaths, and enquire of other men.

Complaint is
not necessary.

Touching the recording of the force, although both this Statute (8.H.6.) and that other (15. R.2.) haue mention, That the Iustice shall (vpon complaint made vnto him by the partie grieued) goe to the place, &c: yet, that doth not enforce any necessitie of such a complaint: for it is holden (7.E.4.18.) that a Iustice may Record a forcible entrie, and holding, or may enquire of it, and make restitution also, (vpon any information, or knowledge thereof whatsoeuer) though no complaint at all be brought vnto him by any partie grieued thereby. And, as the Statute saith, that this ought to be done at the costes of the partie grieued: So *W. Marrow* thinketh, that vnlesse those costes be tendered before hand, the Iustice needeth not to stirre about it. But, howsoeuer he (being then a practizer in law) might thinke it good to stand vpon his fee: yet I aduise our Iustice of the Peace to go forward, as hauing more regard of his credite, oath, and duetie.

The right is
not common-
ly disputable.

Neither ought he to stagger, or stay at all, about the right, or wrong, of his Title that entreteth, or holdeth, forcible. For, considering that

that the sayde Statute (5. R. 2.) doth without exception prohibite all entrie with force, howsoever the entrie be otherwise lawfull; and seeing also, that the other Statute (8. H. 6.) permitteth no forcible holding, but onely where three yeres possession haue gone before: And, that both they, and this other (15. R. 2.) do altogether labour to repressse force, and violence: and haue also made the Iustice of the Peace their minister therein: I see no cause, why the Iustice of Peace (who perhaps shall want sufficient learning in the Lawe to discern the right, or title, and yet may be both a fit person to remoue the force, & able enough to restore the possession) should bee tied to the discussion of the right, or title, of either of the parties.

And this I gather, vpon the opinion of all the Court (9. H. 6. 19.) which was the next yere after the making of the last of these Statutes: where it is sayd, that the Action vpon the Statute (8. H. 6.) is for the right onely, and must alway say, *Illicite ingressus est, or ubi ingressus non datur per Begem*: but the enditement is for the force in respect of the King, to whome the partie shall make Fine, although his right be neuer so good, and sound.

And thereupon, the booke (22. H. 6. 18) admitteth this case: That if A. shall disseise B. of his land, and B. do enter againe, and put out

A.

A. with force: A. shall be restored to his possession by the helpe of the Iustices of the Peace, although his first entrie were utterly wrongfull: and, that (notwithstanding the same restitution so made) yet B. may well have an Assise against A. or may enter peaceably upon him againe.

And therefore, the Iustice of the Peace may boldly proceed in this businesse, taking with him sufficient power of the countrey by his discretions (saith therein the Shrieve also, if need doe require) as well for the arresting of such as he shall find to enter, or hold, forcible against these Lawes: as also for the removing of the force which they bring, and for the conveying of them to the next Gaole, as persons thereof convicted by his owne esteem, or record.

Recording of the Force.

3. The forme of which record, may stand upon
on two partes: the one, to remaine amongst
the records of the peace, or to be certified in
to the Kings bench: and the other, to be sent
to the Shire, and to lie with him for his owne
better waite and discharge.

MEnborandis, quod octavo die mensis Ianuarij, anno regni Domini nostri Elisabethe. Et ultio festo noma, Quatuor est milia Roberto Binge, vni Iusticiarii nra dila Domi

Regina

Regina ad pacem in dicto comitatu conservan-
dam, Necnon ad diversa felonias & alia male-
facta in eodem Comitatu audienda & terminan-
da assignatorum, quidam A. B. de Wrotham
in dicto com. Yeoman, quod C. D. de Wrotham
predicta, & nonnulli alij pacis dictae Dom. Regi-
ne perturbatores ignoti, in domum mansionalem
ipsius A. B. in Wrotham predicta, manu forti
ingressi sunt, & ipsam A. B. inde disseverunt,
ac eandem manu forti & armata potentia ad-
huc tenent: ac proinde petijt a me sibi in hac
parte remedium apponi. Qua quidem querimo-
nia & petitione audita, ego prefatus Rob. Bing
immediate ad dictam domum mansionalem perso-
naliter accessi, ac in eadem domo aditu inveni
prefatum C. D. & quosdam E. F. & G. H. & c.
domum illam vi & armis manu forti, & armata
potentia, viz. arcibus & sagittis, gladijs, pugio-
nibus, galeis, & Loriceis tenentes, contra formam
Statuti in Parlamento Domini Henrici nuper
Regis Anglie sexti anno regni sui octavo tento,
editi ac promissi, ac contra formam diversorum a-
liorum Statutorum. Ac propterea ego prefatus
Robertus Bing predictos C. D. E. F. & G. H.
aditu & ibidem arrestavi, proximaq; Gaola
dicta Domina Regina apud Maidstone in dicto
comitatu duci feci, ut de dicta manu forti tentio-
ne per visum & recordam meum comitatus, ibi-
dem morantibus quousq; fines dicta Domina Re-
gina pro transgressionibus suis predictis fece-
runt.

rint. Datum apud Wrotham predictam sub
figillo meo, die & anno supradictis.

Per me prefatum Robertum Bing.

And the forme of the *Mittimus* to the
Gaoler, may be thus.

Kent.

RObert Bing, one of the Iustices of the
Peace of our Soueraigne Ladie the
Queenes Maiestie within her sayd Countie
of *Kent*, to the keeper of her Maiesties Gaole
at *Maidstone* in the sayd countie, and to his
deputie and deputies there, and to every of
them greeting: Whereas vpon complaint
made vnto me this present day by *A. B.* of
Wrotham in the sayd countie *Teoman*, I went
immediately to the dwelling house of the
said *A. B.* in *Wrotham* aforesayd, and there
found *C. D. E. F.* and *G. H.* of *Wrotham* a-
foresaid, Labourers, forcibly, and with strong
hand, and armed power, holding the sayd
house, against the peace of our sayd Soue-
reigne Lady, and against the forme of the
Statute of Parlement thereof made in the
eight yeere of the reigne of the late *K. Henry*
the sixt. Therefore I send you (by the bring-
ers hereof) the bodies of the said *C. D. E. F.*
and *G. H.* convicted of the sayd forcible hol-
ding, by mine owne view, testimonie, and re-
cord: commaunding you in her Maiesties
name,

name, to receiue them into your said Gaole, and there safely to keepe them, vntill such time as they shal make their fines to our said Souereigne Ladie for their sayd trespassses, and shall be thence deliuered by the order of the Law of the land. Hereof sayle you not, vpon the peril that may follow thereof. Yecouen at *Wrotham* aforesayd, vnder my seale, the day, and yeere abouesayd.

By me the sayd Robert Bing.

But now, forasmuch as this Law hath prouided restitution for the partie that shal be put out of possession by such forcible entrie: and for that no restitution can be made by the Iustice of Peace, but onely vpon the finding of the same putting out by the oaths of the Enquirors: let vs also consider what is the due tie of the Iustice in these two points, of Enquirie and Restitution.

Enquirie of
the Force: and
restitution.

Concerning the Enquirie, *M. Marrow* noteth these few things: First, that it is no cause to impeach the Enquirie, though the Iustice do not go to see the place where the Force is: and yet the wordes of the Statute are, Whether the persons be present, or auoided before the Iustices comming: Secondly, that albeit the letter of the Statute is, that each Iuror of this enquirie ought to haue lands, or tenements of the cleare yeerely value of for-

M. j.

tie

tie shillings: yet if any of the presentors haue not so much land, the presentment is good for the Queene: but then (saith he) the partie shall haue no restitution by it, if that matter be shewed at the time of the restitution to bee made. Nowbeit, I doe not well perceiue, how the restitution (that the Iustice of the Peace ought to make vpon such a presentment) can be staied, saue onely by remoouing of the record into the Bench of the Queene. And thirdly, that if the Shirife shall returne smaller issues vpon the Enquirors then the Statute doeth appoint, yet the partie shall neuer take aduantage of it.

Restitution.

And now, though (in some cases) for the punishing of the offenders (by imprisonment, and fine) it be not altogether requisite to bee founde, that the partie griued is actually throwen out of his possession by them, in so much as the onely holding with force wil suffice for that purpose: yet (in other cases) for the hauing of the restitution by the Statute, this putting out must of necessitie (saith M. Marrow) be found by the Enquirie.

And therefore, if the trueth of the case be, that after the death of A. another man abateth (or entreth) into his land forcibly, before the heire of A. hath gotten any actuall possession in deed: the heire of A. shall haue no restitution, (as Marrow saith) because he had but a
possession

possession in law onely. So, if it be presented, that you were seised, vntill that A. entred vpon you with force: you shall neuer haue restitution by it, because it may bee that hee entred forcibly, and that yet you were not put out of possession by him. Marrow. But, if it be found that you were seised, vntill that A. put you out with force: or vntill that A. put you out, and that he holdeth in with force, then you shall be restored to your possession, as saith M. Marrow.

And this putting out, is alwayes to be vnderstood, either of a house (or land) onely, and not of a Rent, a Common, or an Aduowson, *2. altho. 59. a.* or any such other like thing, whereinto an actual entrie cannot be made. Marrow. Moreover, it is not inough that the putting out be found, vnlesse the Enditement doe also containe *adhuc extra tenet*, that he yet holdeth the other out of his possession: without the which, it may bee thought that the other hath gotten in agayne, and then restitution shall be needlesse.

Againe, this restitution ought to bee made to him that was put out, and to none other: So that, if the father be put out by force, and dieth after the time of Enquirie, and before restitution, his heire shall not haue restitution vpon it: Marrow.

And in some cases (saith M. Marrow) there

M. ii,

may

may be a double (or crosse) restitution awarded: as, if it be found by one Enquirie, that I my selfe was seised vntill that A. disseised me with force: and by an other Enquirie, that the same A. was seised, vntill by me disseised with force: now either of vs may pray restitution, and shall haue it agaynst the other: because it is by seuerall Inquisitions, whereof the Iustices (supposed to be seuerall) cannot take mutuall vnderstanding, and then shall he be in the worse case, that hath the first restitution: for the other shall haue him remoued, by his restitution that commeth after. So, (by his opinion) if it be found, that I my selfe was seised, vntill disseised by A. with force, whom also B. disseised with like force: Where if A. getteth restitution agaynst B, then may I also haue my restitution agaynst A: But if I first obtaine my restitution, then hath A. lost the advantage of his: because it appeareth by the selfe same Inquisition, who had the first possession. And if it happen two Joint-tenants of land to be put out with force, and the one of them onely will sue for restitution, he ought to haue it made vnto him. Marrow.

Restitution, to
a Lessee for
yeeres,

But whether a Lessee for yeeres of lande, that is expulled by force, shall bee holpen by these Statutes, it hath bene a good question. For, on the one side it is sayd, that albeit the preamble of the Statute (15. R.2.) hath the word

word (possessions) which maye extend to a lease for yeares, because that of such a lease a man is sayd to be possessed, euen as hee that hath an inheritance, or freehold, is sayd to bee seised: and although also the puruiew of the Statute (8. H. 6.) useth the same word (possessions) also, yet that (say they) is but onely where the force is to be remooued, and where the offendours are to bee punished by imprisonment and fine: all which they graunt may be done in the behalfe of a Lessee for yeares: But seeing that seuerall branch of the Statute 8. H. 6. (which doth directly prouide the restitution) omitteth that worde possessions, therefore (say they) none shall haue restitution, but such onely as be put out of landes, or tenements: and those wordes must be understood of them onely, that haue inheritance, or freehold at the least. So that, if such a Lessee (or any Copyholder) will be aided by way of restitution, the Enquirie must (by this opinion) find the Lessor (or the Lord) to be forcibly put out, and expelled: that by his restitution, the Lessee or Copyholder, may bee restored also.

But on the other side, *H. Marrow* maketh no doubt, but that such a Lessee for yeres may haue restitution by the hand of a Iustice of the Peace. And (to accompany him herein) who can denie, that the same inconuenience (which

these lawes do labour to remooue) followeth not, equally in either case ; Besides that, the very words of that speciall branch are these, If it be found, that any doth contrary to this Statute, then the sayd Iustice shall cause the sayd lands, and tenements to be reseised, and shall put the partie (so put out) in full possession of the same. Upon which words it followeth : First, that if he which expulseth by force a Lessee for yeares, doe contrary to this Statute (as it is graunted that he doeth) then that Lessee ought to be restored to his possession by this branch : and secondly, if they wil haue the life of the law to rest ouely in the bare letters, and syllables thereof, (a thing which wise men do condemne, and call *verborum aucupium*) then the words be, that he shall be put in full possession, which word possession agreeth better with a lease for yeares (as themselves say) the with a freehold, or inheritance, for which the word seisine is altogether vled, But the common opinion swayeth to the other side : therefore leauing this to the iudgement of the better learned, I will returne to the office of our Iustice.

After the entrie, or detaining with force shal be thus presented, the Iustice of the Peace may either by himselfe, or by direction of his precept to the Shirife, (vnder the Teste of himselfe alone) restore the partie grieved to his poss

possession.

And if vpon a Writ of restitution to the Shire, he shall retorne that he is so resisted that he cannot bring the partie into his possession, he shall be amerced for such his retorne (saith Marrow) because he may take the power of his countie to assist him therein.

And it is certaine, that if the presentment be sent into the Kings bench, the partie may haue his restitution awarded out of that court, by the equitie of this Statute: as it is holden 7. E. 4. 18: & 4. H. 7. 18: But if it happen that Iustice of the Peace (before whome the Enquirie was taken) to die before restitution be deliuered by him, it may bee doubted, whether his fellow Iustices (hauing the presentment brought vnto them) may at their Quarter Sessions awarde the restitution: because the Statute seemeth to referre it to them onely before whome the Enquirie was made. It is (I know) the opinion of Master Marrow that they may: grounding himselfe (as I thinke) vpon the same equitie, by which the Iustices of the Kings Bench are enabled to do it: Howbeit it may appeare (*Collect. Diar.* 187.) that the lawe is otherwise taken both therein, and also in the granting of a *Superseas* to stay the restitution: because no Iustices can doe that, or this, but they onely that were present at the Session when the Endite-

Trauerse.

ment was found, except those of the Kings Bench, who (for the supposed presence of the Prince) doe carry a supreme authoritie in these cases of the Crowne. But Marrow agreeth, that neither the Iustices of the Kings Bench, nor any other (besides him that made Enquire) can personally restore the partie, but by way of Precept onely. Agayne, whether (after such a presentment) the partie charged may bee admitted to his Trauerse before the same Iustice of the Peace, & if not, then where, or before whome, this Trauerse is to be made or tendered, I will not take vpon me to resolve.

This seemeth (vpon consideration of both the Statutes) to be plaine, that such persons as the Iustice of Peace doth find, and see, continuing the force at his comming to the place, them hee may immediately commit to the Gaole, as conuict of that offence, notwithstanding any their gainesaying whatsoever: But, vpon the enquire, I see not that the Iustice of peace hath any other power committed vnto him (by 8.H.6.) then to make the restitution only, which also it seemeth that he may make, notwithstanding this offer of Trauerse. And therefore, the safest way that I can shew him, is to deliuer the presentment, either to the *Custos Rotulorum*, or the Clarke of the peace, or to the Iustices of Gaole deliuerie, (as in other cases,

cases, by the Statute (4.E.3.cap.2) it was appointed to be done) or els to certifie or deliuer it into the Kings bench: and so, to referre the further proceeding therein, to their further power, and authoritie.

Againe, touching the assessement of the Assessement
of the Fine.
Fines, or ransomes, vpon the offenders, so con-
nicted by the recorde of the Iustice of peace,
and by his warrant comueighed to the Gaole,
some men do thinke, that the same Iustice hath
sufficient authoritie to put them to their fines,
and vpon pledges (founde for the payment
thereof) to deliuer them out of prison againe,
when he by his discretion shall thinke it good.
For (as they say) he is the onely appointed
Iudge ouer this offence, and onely hath the cu-
stodie of that recorde, and knoweth best both
howe to moderate the imprisonment, and to
rate the fine, according to the quantitie of
their trespasse, and offence. And, as he is bound
by his othe and duetie (in their opinion) to
estreate all issues, and amerciaments grow-
ing to the Queene by this enquire: So,
ought he also to estreate, and send this into the
Escheaquer: that from thence the Shiriffe
may be commaunded to leuie it to her Maie-
sties behoofe. But (graunting this to be true)
yet, (to auoide all perill, of dashing against the
rocke of doubt) I thinke it the better course,
to referre this ouer to the Quarter Sessions,

or assises, as I aduised in the case that went last before.

Continuance
of 3. yeeres
possession.

Nowe must I conclude, as doeth this Statute (8.H.6.) with this prouiso: that such as keepe their possession by force, after that they haue the continuance of 3. yeeres possession, shall not be endamaged by force of that Statute. And here the booke (14.H.7. 28.) stayeth me with one other question: for, there it is sayd, that albeit in an Action vpon this Statute, it be a good barre for the defendant to pleade his 3. yeeres possession, though it were altogether by force: yet, (vpon an enditement) Twentie yeeres possession by force shall neither be any plea against the Queene, nor shall hinder the partie grieved from his restitution out of the Kings Bench. Vpon this authoritie, some haue conceiued this generall opinion: that the continuance of three yeeres possession wil in no case protect a man against the Queene, but only against the partie in his priuate action by way of Barre.

Howbeit, if the wordes of the prouiso, and the reason of inserting the same, be truly weighed, that opinion will not fall out altogether so reasonable, as it hath the shewe to be faire, and plausible. For the wordes are, that such an one shall not be endamaged by force of that Statute: and there is no doubt, but that he is deepe lie endamaged, which is both impriso-
ned,

ned, fined, and put out of his land that he hath possessed.

Againe, when this Statute had in general termes brought (within the penaltie of 15.R. 2.) all such as should deteine any lands or tenements with Force after that they had peaceably entred into the same: yet was it thought iust, and comuenient, to exempt from that punishment all such, as (hauing entred in peaceable maner) had also continued their possession thre yeares together without any forcible detainer of the same. And therefore, it seemeth to mee, that such persons bee not onely to take the benefit of that prouiso, in actions vpon the Statute to be commenced agaynst them: but also to vse the aduantage of the same agaynst an Enditement for the Queene, to auoid the imprisonment, and fine, & agaynst the partie complainant to debarre him of any Restitution by the hand of a Iustice of the Peace. And thereupon M. Marrow writeth, that if the 3. yeres possession be found by the Enquirie, then the forcible deteinours shall haue the aduantage thereof agaynst the King also: which opinion I take to be very reasonable, not generally vnderstood, but specially, and where (as I sayd) the deteinours did enter peaceably. If so was the opinion of Hales, and Portman, Iustices, 6. & 7.E.6. Report Daliscn: and so likewise was the iudgement
of

of all the Court, 22. H. 6. 8. Nevertheless, the case being put (as it is in that booke, 14. H. 7. 28) both of a wrongfull, and forcible entrie at the first, and then of a forcible deteinor also (though sundry yeares continued) I do easily agree, that such a violent holder should bee denied the protection of this Prouiso, not only in respect of the Queene vpon an Enditement, but also in regard of the partie grieved, touching either his action, or restitution: So that the difference wil rest in this (as I think) whether that continuall possession of 3. yeares do immediatly folow a peaceable or a forcible entrie. Continuall I sayde, because Judge Brooke (*Tit. Forcible entrie. 29*) seemeth to hold, that if that possession by 3. yeares haue not bene continuall, and without interruption, then (if he reenter) he cannot holde or deteine with force, be his right, or Title neuer so good, and lawfull. *Collect. Diar. 141: 48.*

These things thus perused and passed over, I will (for the more complete furniture of the Iustice of the Peace in this seruice against forbidden force) arme him with a few precedents, for helpe in his Enquirie, and making of Restitution.

*The Precept to the Shirife, in nature
of a Venire facias.*

RObertus Bing, *vnus Iusticiariorum Domina Regina ad pacem in comitatu Kanc. conseruandam assignatorum, vicecomiti eiusdem Comitatus salutē: Ex parte dicta Domina Regina tibi mando & precipio, quod venire facias coram me apud Ightham in comitatu predicto 20. die Septemb. proximo futuro 24. probos, sufficientes, & legales homines de vicineto de Ightham predict. quorum quilibet habeat xl. sol. terrarum & tenementorum vel reddituum per annum ad minus ultra reprisas, ad inquirendum super sacramentum suum pro dicta Domina Regina, de quodam ingressu manu forti facto in mesuagium cuiusdam A. B. apud Ightham predict. contra formam Statuti in parlamento domini H. nuper Regis Anglia sexti anno regni sui octauo tento, editi, ut dicit: Et videas quod super quemlibet Iuratorum per te in hac parte impanellandorum xx. sol. de exitibus ad prefatum diem returns: & hoc nullatenus omittas sub pœna xx. lib. quam noueris te incursum, si in executione premissorum tepidus aut remissus fueris: Et habeas ibi tunc hoc preceptum. Teste me prefato R. B. 10. die Septemb. Anno regni domine nostræ Eliz. Dei gratia, Angl. Fran. & Hib. Regina, fidei defensoris, &c. 29.*

And vpon default of apparance of these Jurors,

rozs, an alias may be awarded, and after that pluries infinite, till they come: but so, that at the day of the second Wit 40. s. must bee returned, at the third Wit 100. s. and at euery day after, the double.

The Inquirie (or Verdite) of
the Jurors.

INquisitio pro domina Regina capta apud Ightham in comitatu Kanc. 29. die Iulij, anno regni domine nostre Elizabetha, Dei gratia, Anglia, Francia, & Hybernia Regina, fidei defensoris, &c. 30: Per Sacramentum, A. B. C. D. E. F. &c. coram Thoma Fane milite, uno Iusticiariorum dicta dom. Regina ad pacem in dicto comitatu conseruandam, necnon ad diuersa felonias, transgressiones, & alia malefacta in eodem comitatu perpetrata audiendum & terminandum assignatorum: Qui dicunt super sacramentum suum predictum, quod C. D. de Ightham predict. Yeman, diu legitime & pacifice seistus fuit in Dominico suo vt de feodo, de, & in vno messuagio, &c. cum pertinentijs in Ightham predict. & possessionem ac sesinam suam predict. sic continuauit, quousq. A. B. de &c. & alij malefactores ignoti primo die Septembr. ultimo elapso, vi & armis, viz. cum baculis, gladijs, arcubus, & sagittis, in messuagium predict. &c. intrauerunt, ac ipsum C. D. inde dissefuerunt, &

manu

manu forti expulerunt, & eundem C.D. sic disseſitum & expulſum ab eodem meſſuagio, &c. à prædicto primo die, &c. uſque ad diem captionis huius inquisitionis cum huiusmodi fortitudine & potentia armata extrà tenuerunt, & adhuc extrà tenent, in magnam pacis dict. Dom. Reginae perturbationem, ac contra formam Statuti in parlamento domini Henrici nuper Regis Anglie ſexti, anno regni ſui octauo tento in tali caſu edicti & prouiſi: ubi nullus eorum, nec aliquis alius cuius ſtatum ipſi aut aliquis eorum habuerunt aut habuit, aliquid in eodem meſſuagio, &c. aut in aliqua inde parcella habuerunt, aut habuit, infra tres annos proximos ante ingreſſum ſuum prædictum, neq; alio tempore præcedente ad notitiam Iuratorum prædictorum.

The Warrant to the Shirife for the making
of Reſtitution, if the Juſtice him-
ſelfe will not make it.

TThomas Fane, miles, unus Iuſticiariorum,
&c. assignatorum: Vicecomiti eiſdem
comitatus Salutem: Cum per quandam Inquiſi-
tionem patrie coram me captam apud Ightham
in comitatu prædicto, 29. die Iulij, &c. ſuper ſa-
cramentum A.B.C.D.E.F. &c. ac per formam
Statuti de ingreſſibus manu forti factis in tali
caſu prouiſi compertum fuit, quod A.B. &c. & a-
lij, &c. primo die Septemb. &c. in quoddam meſ-
ſuagium,

*suagium, &c. C.D. &c. in Ightham predict. vi
& armis ingressi sunt, ac ipsum C.D. inde tunc
manu forti dissestuerunt & expulerunt, & pra-
dictum C.D. sic expulsus à predicto messuagio,
&c. à predicto primo die Septemb. &c. usq; ad
diem captionis Inquisitionis predicta, manu for-
ti, & cum potentia extra tenuerunt, prout per In-
quisitionem predictam plenius liquet de Recor-
do: Ideo ex parte dictae Dom. Reg. tibi mando
& precipio, quod (ad hoc debite requisitus) una
cum posse comitatus tui (si necesse fuerit) acce-
das ad messuagium & cetera praemissa, ac eadem
cum pertinentiis reseisiri facias, & praefatum C.
D. ad, & in, plenam possessionem suam inde, pro-
ut ipse ante ingressum predictum fuerat sessus,
restitui, & mitti facias, iuxta formam dicti sta-
tuti: & hoc nullatenus omittas, periculo incum-
bente. Teste me praefato, &c.*

The executi-
on of a *Wris*
vpon the Sta-
tute of *North-*
hampton.

I come now (at length) to the performance of that promise which I made concerning the statute of *Northampton*: for that also is of late dayes frequently put in vye for the punishment of Forcible Entries. That Law (in effect, and for this purpose) is thus: No man whatsoeuer (except the Kings servants and Ministers, in his presence, or in executing his precepts, or their Offices, and such as shall assist them: and except it be vpon crie, or proclamation made for armes, to keepe the
Peace,

Peace, and that in places where such acts do happen) bee so hardie to come before the Kings Iustices, or other his Ministers, doing their offices, with force & armes: Nor bring any force in affray of the Countrey: nor goe, nor ride armed, by night, or by day in faires or markets, or in presence of the Iustices or other ministers, nor in any place elsewhere, ypon payne to forfeite his Armour to the King, and his body to prison at the Kings pleasure, 2.E. 3. cap. 3.

Upon this Statute, he that is put out, or holden out of his land with force, useth to haue at this day a Writ directed out of the Chancery, either to the Shirife onely (as M. Fitzh. in his Nat. Bre. Fo. 249. rehearseth it, for I finde it not in the Register of Writs) or else *Custodibus pacis, ac Vicecomiti, et eorum cuilibet*, (as the common maner is) commaunding, that Proclamation be made vpon this Statute, and that if any bee afterward found offending against the same, then they shall be committed to Prison (there to remaine untill that some other commaundement bee giuen concerning them) and that their armour and weapon shall be seized, and the same answered to the vse of the Queenes Maiestie.

But, forasmuch as that Iustice of Peace, (to whom this Writ shall be deliuered) is to make execution of the same, as a Minister only: and

is to Certifie their doing therein : I thinke good, to lend him these few helps towards it.

At his comming to the place, where the force is supposed by this Writ, he may cause the Oyes for silence to be made, with this, or such an other Proclamation.

THE Queenes Maiesties Iustice of hir Peace straightly chargeth, & in hir Maiesties name commandeth, all and euery person to keepe silence, whilest hir Maiesties Writ vpon the Statute made at *North.* in the 2. yeare of King E. 3. her noble Progenitour, (deliuered to the sayd Iustice) bee read, and Proclamation bee thereupon made accordingly.

Then may he read the Writ, or declare the effect thereof in English.

After that, let three Oyes be made, and thereupon may this Proclamation follow.

HER Maiesties sayd Iustice, doeth in her Highnesse name, and by vertue of her sayd Writ, straightly charge and command, that no maner of perion, of what estate, degree, or condition soeuer, now being within the house of *B. &c.* named in the sayd Writ, shall go armed, nor keepe force of armour or weapon, nor do any thing there, or elsewhere, in disturbance of her Maiesties Peace, or in offence

offence of the sayd Statute, vpon the paines of loosing his sayd armour and weapon, and of imprisoning his body at her Maiesties pleasure.

God saue the Queene.

This done, the Iustice may enter, and search whether there be any force of armour or weapon worne or bozne agaynst this Proclamation: or otherwise he may enquire thereof by a Iurie, for so the Writ it selfe doth warrant him to do: and if any such be found, he ought to imprison the offenders, and to seize and prayse the armour and weapon so found with them. But if (vpon the Proclamation made) they doe depart in peaceable maner, then hath hee no warrant by the Writ to commit them to prison.

But now let me shew him a Forme of Certificat (or returre) of this Writ into the Chancerie, and then make an end.

Vpon the Writ it selfe these words may be Endorsed.

Executio istius Breuis patet, in quadam Scedula eidem Breui consuta.

And the Scedule may be thus:

EGo Ioannes Leueson armiger, vnus custodum pacis Dom. Reginae in comitatu Kantariae,
N. ij.

cia, certifico, in Cancellariam dictæ Dom. Regina, quod virtute istius Brevis mihi primo deliberati, 10. die Ap. anno &c. publice proclamari ex parte dictæ Dom. Regina feci, apud B. cuius in dicto Breui fit mentio prout in dicto Breui precipitur: Et quod quidam A. C. & D. E. de F. in comitatu predicto Labourers, predictam proclamationem parvipendentes, post proclamationem predictam ibidem sic factam armati iuerunt, ac armatam potentiam ibidem duxerunt, scilicet duas galeas, unum arcum, & decem sagittas, duos gladios, & totidem pugiones, in perturbationem pacis dictæ Dom. Regina, ac terrorem populi sui, necnon in contemptum Statuti in dicto Breui specificati, manifestum: Ac proinde, dicti A. C. & D. E. una cum armaturis suis predictis arrestavi ac seisiui, & eorum corpora ad proximam prisonam dictæ Dom. Regina in comitatu predicto duci feci, ibidem moratura donec aliud a dicta Domina Regina pro ipsorum deliberatione habuero in mandatis, Armaturas etiam eorum predictas appretiari feci, per A. B. C. D. & E. F. de B. predicto. Ycomen, ad hoc iuratos: qui dicunt super sacramentum suum predictum, quod predictæ duæ galeæ valent 10. sol. Et quod dicti arcus & 10. sagittæ valent, 6. sol. Et quod gladij predicti valent 20. sol. Et quod dictæ pugiones valent 5. solidi. & sic quod armatura predicta valent in toto 41. sol. de quibus paratus sum respondere secundum tenorem dicti Brevis. In cuius

*ius rei testimonium, huic presenti certificationi
mea sigillum meum apposui. Dat. apud B. pra-
dict. die & Anno supradictis.*

By this you haue seene, what one Iustice of the Peace ought to doe in execution of this Statute as a Minister: and by the same you may also see, what he may do therein of himselfe, *Ex officio*, as a Judge, and without any Writ brought vnto him.

For not onely by the plaine wordes of the Statute of Northampton, the Wardeins of the Peace, haue power (within their Wards) and are commaunded to execute this Acte vpon a paine: But also by expresse speech in the Commission it selfe, every Wardein of the Peace hath the Statute of Northampton committed to his charge. So that both in the matter and maner, the doing is all one, sauing that (if he do it as a Judge) he needeth not to make any Proclamation (the Statute being a prohibition in it selfe) nor yet to send any Certificat into the Chauncerie, but onely to make his owne Record of that which he shall do in this behalfe, and thereout to send some estreit into the Eschequer, that the Queene may be answered of the Armour, or of the value thereof.

And here (perhaps) the redemption of the imprisonment, may be at the discretion of the same Iustice, euen as in the former Statutes

of 15. R. 2 : & 8. H. 6. it seemeth to bee : but therein mine aduise shall be the same, that I gaue them before : Adioyning this, that in the execution of this Statute of *Northampton*, the Iustice of the Peace hath to do with remouing of the force onely, and may not meddle with any restitution of the possession.

Of other breaches of the Peace,

with a multitude : as by *Riot*, *Route*, or or other vnlawfull *Assemblies*, &c. ; and what any one Iustice of the Peace may do therein out of the Sessions.

CAP. V.

Our Parliaments, seeing well that the assembly of many for breach of the Peace, offreth more danger and hurt, both generally to the Common wealth wherein it happeneth, and particularly to him agaynst whom it is bent, then the force of any one or two turbulent persons can bring, haue no lesse carefully endeououred to suppress the one, then wisely foreseene to preuent and punish the other. And therefore, not onely the Commission giueth power to

Conuenticles.

enquire of Conuenticles against the Peace, but sundry Statutes also haue deuised many meares and paines to meete with, and to punish the same : whereas before, they were punishable

misable only, as other trespasses, though sometimes by a greater, and sometimes by a smaller fine, as the case it selfe required.

But unlawfull Conuenticles be not all of one sort: for sometimes those are called Conuenticles, wherein many doe impart with others their meaning to kill a man, or to take one anothers part in all things, or such like: Champerties also, Maintenances, Conspiracies, Confederacies, and giuing of Liueries to other then to Meniall Seruants and Officers, be contained vnder the word Conuenticles, saith Mar. And it appeareth, (27. lib. Ass. Pl. 44.) to be one of the Articles enquirable in the Kings Bench, whether any persons doe take others to their Auowment, and protection, and doe receiue of them rentes (or other gifts) yearely in the name of Chyuage (or rather Cheifage) because they seeme to take vpon them to be their Cheifs, heads, or leaders.

But, forasmuch as all these conuentions may be without any apparant shew of Assemblie against the Peace (though otherwise they bee finable offences vnder the name and calling of Conuenticles, as Marrow thinketh) I will leaue them, and resort to those other that the Commission saith to be done, *Vi armata*, and that doe bring manifest terrour vnto the Subiect.

Of these, some consist of a number of people,

N. iiii.

ple,

ple, gathered together disorderly for the cause of some one, or of a few persons, and doe not breede any generall or present daunger to the Estate of Government, & yet be against law, and be called Riots, Routs, and assemblies against the law: against which, the Statutes 13. H. 4. ca. 7: 2. H. 5. ca. 8: & 19. H. 7. ca. 13. were specially provided: and before that the penaltie of the Statute of *North. 2. E. 3. ca. 3.* was laied upon them by 2. R. 2. ca. 6.

But others there be, that do saue of a more generall disobedience, and bee (in regard of the number, or quarell) a very Seed of Rebellion if not the Weede it selfe; and are therefore also sometimes called Rumors, great Ridings, Routs and Riots, against the Peace: 5. R. 2. cap. 6: 7. R. 2. cap. 2. & 6: sometimes Assemblies of people in great number, in maner of Insurrection: 2. H. 5. cap. 9. and sometimes Rebellious Insurrections and Rebellious Assemblies, 15. R. 2. cap. 2: 8. H. 6. cap. 14: and 1. Mar. Parl. 1. cap. 12. Of all which (so farre forth as the Iustices of Peace haue interest in them) I will intreat, but yet seuerally, and so, as either one, or moe of these Iustices haue to do with them, and that out of the Sessions.

They of the first kind bee, as I haue sayd, commonly called Vnlawful assemblies, Routs and Riots: concerning the proper difference betweene euery of which, all men do not altogether

gether agree. And therefore (respecting all diuersitie of opinions) I will follow that which I take to be most probable, and at this day most commonly receiued. Wherein neuertheless I submit my pen to the experience of the Starre chamber, as to the best guide and direction that the Iustice of Peace can haue to follow.

An vnlawfull Assemblie, is the companie Assemblie of three or mo persons, disorderly comming together, forcible to commit an vnlawfull acte: as, to beate a man, or to enter vpon his possession, or such like.

A Rout (saith Marrow) is such a company, so asseimbled, for their owne common quarell: as where the inhabitants of a towship come forcibly together to throwe downe a hedge, ditch, or pale, in claiming their Common: or to beate a man that hath done vnto the some publike offence, or displeasure. But the Statute (18. E. 3. Stat. 1.) speaking of Routes that are brought into the presence of the Iustices: and the Statute (2. R. 2. cap. 6.) that treateth of riding in great Routs to make entrie into lands, to beate men, or to cary away their wines, &c. doe seeme to vnderstand the word Route in a more ample and large meaning. And therefore I will describe it thus: A Route is a disordered assembly of three or moe persons, moouing forward to commit
by

by force an vnlawfull acte. For it is a Route, whether they put their purpose in full execution, or no, if so be that they do goe, ride, or moue forward after their first meeting. *Brooke. Riot.* 4. & 5. And thereby it seemeth to me to be the very same, which the *Germanes* doe yet call Rot, that is, a troupe, or band of men, that doe ride, or go forward.

Riot.

A Riot, is thought to bee, where three or moe persons, be disorderly assembled to commit with force any such vnlawfull acte, and do accordingly execute the same. This I thinke to bee deriued from the French worde Riotter, signifying to scold, or to brawle, because such manner of actes bee commonly accompanied with words of brawle.

And thus (vpon the whole reckoning) an vnlawfull assemblie is the first degree, or beginning: a Rout, the next step, or proceeding: and a Riot the full effect and consummation, of such a disordered and forbidden action.

Things that
be common
to Riots,
Routs, &c.

But howsoever that stand, two speciall things there are, that bee common and must concurre, both in the Vnlawfull assemblie, Route, and Riot: the one, that three persons (at the least) be gathered together, for so it is commonly holden at this day, as I haue learned: the other, that their being together doe breed some apparant disturbance of the Peace, either by signification of Speach, shew of Armour,

mour, turbulent Gesture, or actuall & expresse Violence: so that either the peaceable sort of men bee unquieted and feared by the Fact, or the lighter sort and busie bodies be emboldened by the Example.

And, in these matters, not onely the Fact it selfe, but also the Maner of doing the same, falleth sometimes iustly into consideration: in so much as, the lawfulness, or unlawfulness, of the thing it selfe that is done or intended, doth not alwayes excuse or accuse the parties to a Riot, Route, or Vnlawfull Assemblie, but so, that the Order and Circumstance of the doing, must also be brought into iudgement with it.

Things, that be considerable, in Riots, Routes, &c.

And therefore (saith M. Marrow) the maner of the doing of a lawfull thing, may make it unlawfull: As, if many in one company (riding, or going, to the Sessions, Faire, Market, or Church it selfe) will ride, or goe armed, to the terrour of the people. So, if three (or moe) shal enter into land with force, where their entrie is otherwise lawfull. And contrarywise, an Assemblie to do a wrong (saith he) may be so handled, that it shall prooue none of these offences: as, if I gather meete company together, to cary away a piere of Timber (which will not bee mooued without a good many) whereto I pretend right, though in lawe it be an other mans. And so also to do an unlawfull thing: as if many do meete to play at bowles, tables,

The maner.

tables, or cardes, and doe vse no mis behauiour against the Peace, they are not punishable in this degree. And yet, if hee that carieth the piece of timber away, will vse dreadfull words, as to say that he will cary it in spight of him that hath it, or that he will haue it, though he die for it, or such like, his doing may then become a Riot. Marr.

The purpose.

Furthermore, the intention and purpose, of those that be assembled, is worthie the weighing. If or, to vse harnesses on Whitsommer night in London, or on Day day in the countrey (for sport onely) is no such offence, seeing no terrour foloweth of it: and the words *in terrorem populi*, seeme to be materiall in an Inditement of this kind. So if the Shirife or his Bailife do leuie people to serue the Queenes Writs of *Capias*: or if a Constable do gather assistance of men with weapon to part an Affray, it maketh no Riot. 3. Hen. 7. 1. & 10. So if a man (hearing that another wil fetch him out of his house and beate him) doe assemble companie with force, it will be no unlawfull assemble: for his house, is his Hold and Castle. But, if he be onely threated, that he shall be beaten if he goe to the market, then may he not assemble company for his aide: because he needeth not to go thither, and he may prouide for himselfe by Suertie of the Peace. 21. H. 7. 39. Fineux.

And if many be assembled, and none of them

them knoweth to what ende, it can make no Rout, nor Riot (as M. Marrow thought) till the intent be knowen. For if the master intend to make a Riot, and take his usuall seruants with him, not foretelling them what he intendeth to doe, and then committeth an outrage with them, this is no Riot in them: for although he shall be punished, they shall be excused. But otherwise it is, if he make them priuie to his purpose, for then they also shall be punished: Marr. and Report Dalison. And in the former case it is not materiall, whether his number of seruants be aboue his degree or no, so long as they be his Menials, or household men, Dalison.

If many be at an Alehouse, a Christmasse dinner, or Churchale, and (without any intention of an Affray) they sodainly fall together by the eares, and make it *Lapitharum conuiuium*, yet this is no Riot, but a sudden affray, because they had no such intention: But if (in that affray) they shall betake themselues to sundry partes, it may become a Riot, as Marr. thinketh: for then it is not the first, but a new assembly, as I take it.

And if 12. Iurors (being committed to their keeper) do fall out and fight, fire against fire, this maketh no Riot (saith Marrow) because they were lawfully assembled, and were compelled to be in company together.

But,

But, if a number of women (or children, vnder the age of discretion) do flocke together for their owne cause, this is none assemblie punishable by these Statutes, vntlesse a man of discretion moued them to assemble for the doing of some vnlawfull act, as M. Marrow writeth: Yet I remember well, that (not many yeares ago) sundry women were punished in the Starre chamber, and that worthily: because, putting off that shamefastnes which be seemeth their sexe, they arayed themselves in the attire of men, and (assembling in a great number) they most Riotously pulled downe a lawfull inclosure.

Finally, Marrow noteth, that if the Maior and Communaltie of a towne doe assemble and make a Route in their common quarell, this offence shall bee iudged and punished in their Naturall persons, and not in their bodie politike.

Thus farre you see, what these offences be, and in what maner they may be committed: now therefore behold what power one Iustice of the Peace hath ouer them.

The power of one Iustice of the Peace, in Riot, &c.

One Iustice of the Peace, can neither make enquirie of a Rout or Riot when it is done, nor assesse any Fine; nor yet award any proesse for it, nor otherwise meddle with it (in the very nature of a Route, or Riot) but onely as a Trespasse against the Peace, or vpon the Statutes

tutes of *Northampton*, or of Forcible entries, whereof I haue before treated.

And therefore, if he heare of any Route, or of any intention of a Riot, hee alone (or with his seruants) may go to the place, and such as he findeth Riottously assembled and armed, he may arrest to find Suertie of their Good abearing, and may commit them to Warde, if they refuse to giue it, and may take their weapons from them: And if he come to the place, and doe not find them yet commen thither, he may leaue his seruants there, to make such arrest when they shall come: So also, if he bee sicke, he may send his seruants to the place to arrest them.

And this is the iudgement of all the Court, in that case of Sir Thomas Greene, 14. H. 7. 8, in the booke at large: grounded vpon the words, both of the Commission of the Peace, and (as I take it) of the Statute, 34. E. 3. cap. 1: For, that which is found in the report of that same case (made by Fitzher. *tit. Inst. del Peace. 9.*) hauing many other matters (not extant in the booke of the Termes) seemeth rather to pertaine to the Statute 13. H. 4. ca. 7. then to this Statute of E. 3.

But, if one Iustice of the Peace alone, will take vpon him to Record a Riot that he seeth, the partie shall not be concluded thereby: for he may trauerse it: and if the Iustice wil commit

mit one to Ward, pretending butruly that he did a Riot, where he did none, an Action of trespasse lieth for the partie against him. *Fitz. tit. Just. del P. 9.*

So that (vpon the whole matter) one Iustice of the Peace alone may doe somewhat to preuent a Rout or a Riot, before it be done, and for the stay of it whilest it is in doing, but nothing (in effect) to punish it as a Riot, or Route, when it is committed and done, & for (as Iudge Fincux saith) in that case of Sir Tho. Greene, the Statute (which I take as I sayd) to bee that of 34. of E. 3. (rather then 13. H. 4. which by expresse wordes requireth the presence of two Iustices at the least) was giuen as a hastie remedie, and for to preuent a mischiefe, being imminent and before the eye: and therefore the Lawe shall largely construe the authoritie of a Iustice of Peace in that behalfe: So that he shall neither need to make any Precept in writing, nor to expect the coming of his Companions, nor to be present in his owne person, but may vse all reasonable meanes for preuention and stay of the euill. And yet the ordinarie power of punishing Routes, and Riots, resteth not in his hand, but rather belongeth vnto two Iustices of the Peace, as it shall hereafter appeare.

In the meane while, it shall not be amisse to adioyne somewhat for Supplie out of the Statutes

tutes of our owne age : the which, seeing further into the perils that ensue of the se disordered companies, haue also prouided further, as well in pollicie to preuent, as in seueritie to punish them.

The statutes (1. Mar. Parl. 1. cap. 12 : & 1. El. ca. 17.) do make three degrees of Riottous and Seditious Assemblies, in certaine speciall cases : the first, consisting of the common number of three persons, & being vnder the number of twelue : the second of twelue persons, or more : and the third, of fortie persons and upward : All which, are to be punished diuersly, according to the number, intent, act, and obstinacie, of the parties assembled : wherein there is some imitation of an ancient law that King Ina made against theeves, whose degrees in offence he also seuered and punished by their number, saying thus : Deoƿar pe hataƿ oððe ƿeoƿan menn ; ƿƿam ƿeoƿan hloƿ. oƿ ƿif 7 ƿƿittig ; 7 ƿƿððan heƿe ; that is, Theeves we call them vntil the number of seuen men : from seuen, a Troupe, vntill 35 : and an armie, aboue that number. But I will proceed.

One Iustice of the Peace therefore, may (by vertue of these Statutes) make or cause to be made, a Proclamation in the Queenes name, (after three Oyes) thus : The Queene our Soueraigne Ladie chargeth and commaundeth all persons being assembled, immediately

Rebellious
and vnlawfull
assemblies.

Proclama-
tion.

mediatly to disperse theſelues, & peaceably to depart to their habitatiōs, or to their lawfull busines, vpon the paines contained in the Act lately made againſt vnlawful and rebellious aſſemblies: And God ſaue the Queene. And he alſo may (at his diſcretion) aſſemble her Maieſties ſubiects to take them: and may take them in deed if they diſobey: and ſhall be unpuniſhed for the hurting, maiming, or killing of any of them, if they make reſiſtance. He alſo is to take the declaration of any perſon, that (being mooued to any ſuch aſſembly) will within 24. houres after reueale the ſame vnto him:

Now muſt I here ſtay, and (for a time) go no further with theſe aſſemblies, becauſe the power of one Juſtice of the Peace faileth me, and extendeth no further in them: the reſt ſhall be diſcloſed, when order ſhall leade vs to intreat of the authoritie of two Juſtices.

What

What other things any one

Iustice of the Peace alone, may
doe out of the *Sessions*, by vertue
of Statutes mentioned in
the *Commission*.

CAP. VI.

BEfore that I shall descend to shew
such further partes of power as be
giuen to one Iustice of the Peace by
latter Statutes, it shal not be amisse
to take in my way, that remnant of his autho-
ritie which lieth in the first *Assignamus* of
the Commission, and hath not bene yet fully
applied to the practise.

The whole consisteth of such members as
I haue already shewed, namely, of the Sta-
tute made at *Winchester*, 13. E. 1. of the Sta-
tute made at *Northampton* 2. E. 3. cap. 3. the
Statute made at *Westminster*, 5. E. 3. ca. 14.
the Statute made at *Cambridge*, 12. R. 2: the
Statutes 1. H. 4. cap. 7: & 2. H. 4. cap. 21: of
Liueries: and the Statute 3. H. 5. cap. 6. & 7.
of counterfeiting, and other falsifying of co-
ined money.

Of this last Statute (as also of that at
Northampton) I haue heretofore sayd what
I thought. Concerning *Winchester* and *West-*
minster, I say shortly now, that by the forme
of the Commission (as it is) one Iustice of the

D. ii.

Peace

Peace may put the articles of them in execution: First, by commanding fresh sute, huy and crie, and search, to be made by the Shirifes, Bailifes, and others, after thefts and robberies: by enioining watches to be kept for arresting of suspected persons, and of night-walkers: and high wayes to be enlarged: Then by seeing, that two Constables be chosen in eache Hundred & Franchise: by forbidding Faïres and Markets to be holden in Churchyards: by compelling such as be betweene the age of fiftene yeares and threescore, to be sworne to the Peace, for that also is in the Articles upon the Statute of *Winton*: and lastly, by charging the Constables to arrest such as shall be suspected to be Drawlatches, Wastours, or Robertsmen, that is to say, either miching or nightie theeves: for the meaning must remaine, howsoever the worde be gone out of vse. As for those lawes of Liueries, I see not what one Iustice of the Peace may well do towards the execution of them, further then by commaunding them to be obserued. For, the forfeiture groweth, either by Attainder vpon enquirie, or by Record of the Iustices in their presence, as the Statutes themselves doe appoint: And these both do require two Iustices, as the very wordes thereof, and of the second *Assignamus* in their Commission (being in the plurall number) do plainly purport.

For,

For, I do not thinke that any other maner of execution of these lawes (by one Iustice of the Peace) ought to be gathered by any generall words of the first *Assignamus*.

I know, that M. Fitzh. (in his Nat. Br. Fol. 82.) saith, that albeit a Iustice of the Peace hath none expresse authoritie within his Commission to take a Recognisance of the Peace, yet of Congruence it followeth, that he may take it, because he hath authoritie in playne words, to cause the Peace to be kept, and to compell men to finde Suertie for the same: And it is a Rule of Law, *Concessio uno aliquo, etiā id concedi videtur sine quo prius concessum haberi nequit*: But how far these things may be drawen, I wil not determine, remembring, that this also is an other Rule, *In generali concessione non veniunt ea, quæ quis non esset verisimiliter in specie concessurus*.

But as I haue sayd heretofore, A reformation of the present forme of the Commission, would easily remoue these doubts from vs.

This (to be plaine) I do not like, that one Iustice of the Peace should take vpon him to bind an offendour against any Penall Lawe, (being within the power of Iustices of the Peace, but yet neither comprehended in the Commission, nor committed to the charge of any one of them) to appeare at the Sessions, to answer to his fault. For, although I haue

seene sundrie old Precedents of Attachments made from one Iustice of the Peace agaynst Labourers, to be before the Iustices at their Sessions, to answer to their contempts: yet I am not perswaded, that the like may bee done against the offenders of other Statutes, vnlesse it be specially therein so appointed: no more then it might haue bene done in that case of Labourers it selfe, had not the Statute of Labourers (25. E. 3. cap. 6.) expressely commanded it.

And I doubt not, but they of the late Parliament were also of this mind with me: For, if they had thought it generally lawfull so to do, they would not haue so specially provided for it, as you shall anone see in the notes of the Statutes, (23. Eliz.) against Slaunderous newes, and against the taking of Pheasants and Partriches. And surely, much harme followeth of it, for it falleth out most commonly in experience, that those Iustices which bee most busie to take such bonds, be no lesse ready to release them: and so (playing fast and loose) they keepe (as it were) priuie Sessions within their owne houses, in which, both the Queene looseth her Fine, and the common wealth an example: and if the offender loose also, then that (belike) falleth to the share of him that worketh the deliuerance.

And therefore, it were better (as I weene)
that

that such offenders were first Endited, and then that Processe were orderly awarded against them, vntill that either they peelded themselves, or were taken, or outlawed.

There is an other thing also, whereof I thought meete to admonish the Iustices of Peace, in this place. Many of them doe vse to giue out their Precepts to attach persons suspected of Felonie, to the ende to haue them brought before them: which thing is neither newly deuised by them, nor done without colour: for they haue such a Precedent in the old booke of Iustices of the Peace, Fol. 41: and there is no doubt, but that if a Felonie be done, euery man may arrest whomesoeuer he suspecteth of it. But for all that, the whole Court (14. H. 8. 18.) condemneth such Precepts: because, if the Bailife, which serueth the Warrant, haue suspicion in the partie, he may of himselfe (without the Warrant) arrest him: and if he haue not, then is the

Warrant of a Iustice of Peace no

Warrant to arrest him, vn-

lesse he bee endited

before.

What other things one Iustice
of the Peace may doe, out of the *Sessi-*
ons, by the power of other Statutes, not
mentioned in the *Commission*: and
therewithall of Manflaugh-
ter, and of all other
Felonies.

CAP. VII.

Any one Iu-
stice of the
Peace.

Seing the whole power of one Iu-
stice of the Peace (as well in the
very businesse of the Peace it selfe,
as in the execution of some Sta-
tutes mentioned in the *Commission*) hath now
at length bene rehearsed: It is comenient to
summe vp such other partes of authoritie also,
as other Statutes haue put into his handes:
which done, we will no longer treat of one Iu-
stice alone, but will associate some other vnto
him.

Conseruator
of Riuers.

Euerie Iustice of the Peace is a Conserua-
tor of Riuers within his Countie: and (when
he may attend it) ought to suruey the Weares
in Riuers, that they be of reasonable wide-
nesse, and shall suruey the offences of taking
Salmons in any Waters (out of the Countie
of *Lancaster*) betweene the Natiuitie of the
Virgin Mary, and S. Martins day, and (there)
betweene the feasts of S. Michaell, and the
Purification of the sayd Virgine: and of ta-
king

king pong Salmons at Mill Pooles, or other places, from the midst of Aprill till Midsummer: and of casting Nets into any Waters, (by which the frie of any fish may be taken) and punish the same by burning of their Nets and engines. *Westmonast. 2. ca. 47: 3. R. 2. ca. 19: & 17. R. 2. cap. 9.*

One Iustice of the Peace may take vpon Apprentices, him to heare and order the controuerlies, between Masters and seruants, touching their departure, and may allow of the reason, and sufficiencie of the cause, for which a Master may put away his retained seruant, or the seruant may depart before the end of his terme: and may in (Hay time, or Haruest) vpon request, and for the sauing of Corne, graine, or hay, cause such Artificers, and persons (as be meete to labour) by his discretion, to serue by the day, for the getting, cutting, innings, or carrying thereof, according to the skill and qualitie of the person: and may (vpon his refusal) imprison him in the Stockes by the space of two dayes and one night. And his testimony all vnder his hand and seale to such as may passe in Hay and haruest time, from one Shire to another, is sufficient. And he also vpon complaint made, may commit that partie to Ward, that in his iudgement shall be thought meete, and yet shall refuse to be bound as an Apprentice, according to the intent of the Statute,

Statute, there to remaine untill he be contented so to be bound. And also may by his discretion vpon the complaint of the Apprentice, take order betweene his Master and him, and for want of conformitie in the Master, may bind him to appeare at the next Sessions before the Iustices, 5. Eliz. cap. 4.

Rogues and
Vagabonds.

If any such person, as is declared to bee a Rogue, Vagabond, or sturdie Beggar, by the Statute (14. Eliz. cap. 5.) being aboute the age of fourteene yeares, shall be taken begging, or wandring, or misusing himselfe, contrary to that Act, and be brought before a Iustice of the Peace, he is presently to commit him to the common Gaole, or to such other place, as shall be by the Iustices of the Peace, (or three of them) at their generall Sessions appointed therefore: to remaine there (without baile, or mainprise) till the next Sessions of Peace, or generall Gaole deliuerie, which shall first happen.

Poore people.

The Register booke of the Poore within each diuision of the Iustices of Peace, is to remaine with one of the Iustices of that diuision. And either of those two Iustices before whome the Collectors for the poore are appointed to make their account, may commit him (that shall refuse or neglect to make his account, by the space of 14. daies after request to him thereof made) to the next Gaole, there

to remaine without baile or mainprise, till he hath made it, and paid the surpluse of his receit, 14. Elizab. cap. 5. & 27. Eliz. cap. 11. Learne if the Register booke is to haue continuance still.

Upon information to any Iustice of Peace, Hunting. of any vnlawfull hunting by night, or with painted faces, or other disguising (in Forrest, Parke, or Warreine) of any person to be suspected therof, that Iustice may make a Warrant to the Shirife, Constable, Bailife, or other Officer, to take the partie, & to haue him before him, or any other Iustice of the Peace in that Countie, who may examine him of that hunting, and of the doers in that behalfe: and if he do wilfully conceale that hunting, or any person with him defectiue therein, then the same concealment shal be Felonie in such concealor: but if he confesse the trueth of all that he shall be examined in that behalfe, then his offence of Hunting, shall be but Trespasse, and Finable at the next generall Sessions of Peace there, 1. H. 7. cap. 7.

Euery Iustice of the Peace, may (as well Vnlawfull within Liberties, as without) enter into any games. common house or place, where any playing at the Bowles, Coites, Closh, Cailles, halfe Bowles, Tennis, Dice, Cardes, Tables, or at any other game prohibited by any former Statute (of which sort be Footeball, and culling

King of the Stone by 12.R.2.10.) or playing at any vnlawfull game (already inuented, or hereafter to be inuented) shalbe suspected to be vsed against this Statute: & may arrest as wel the keepers of such places, as y players there, and imprison thē vntill those keepers find Suerties to the Queenes vse (to be bound by a Recognisance, or otherwise) no longer to occupie any such play or place, & that the persons found there playing, be in like sort bound by themselves, or with suerties (at the discretio of the taker) no more to play, or haunt, at or to, any of the said places, or at any of the sayde games. And euery Iustice of the Peace, finding or knowing any person (not excepted by this Statute) to vse any vnlawfull game, contrary to this Acte, may commit him to Ward, there to remaine without Baile or Mainprise, vntill he become bound by Obligation to the Queenes vse (in a summe to be thought reasonable to that Iustice) that hee shall not from thencefoorth vse such vnlawful Games: 33.H.8.cap.9.

Tile.

Any one Iustice of Peace (by the large words of the Statute) may enquire, heare and determine by his discretion, as wel by examination as otherwise, the offences committed in Tilemaking, and assesse the Fine therein limited. And may call before him (at any time or place) such as haue best knowledge in Tile-making,

making, and appoint them Searchers of the said defaults, 17. Edw. 4. cap. 4. But learne whether it be so to be taken, or no.

If any Souldiour, seruing the Queene in her Wars, do sell, giue away, wilfully purloine, exchange, alter, or put away, any Horse, Gelding, Mare, or Harnesse, wherewith he shall be set forth, or which (being taken from any other souldiour) shall be appointed vnto him, and do escape the punishment, which the Lieutenaunt, high Admirall, the Kings Deputie, the Viceadmirall, Wardein, and Captaine, and their Deputies, in their absence may lay vpon him, by this Statute: then, vpon complaint and due prooffe of the offence to be made by the owner, his Executors, or Administrators, to any Iustice of Peace, where such offender shall be found, he shall by him be committed to Ward, there to remaine (without Baile or mainprise) till he shall haue satisfiied the owner, his executors or administrators of such Horse, Gelding, Mare, or Harnesse so sold, giuen away, &c. vnlesse he bring with him before the same Iustice, sufficient testimony from the sayd Lieutenant, or any of the persons aboue named (in writing vnder their Seale) testifying, that the sayd Horse or Harnesse, was lost in the Queenes seruice against the will of that Souldiour, or was taken by any of them from him for any reasonable

Souldiours
selling horssc,
or harnesse.

ble

ble respect, and appointed to some other to serue withall, 2. & 3. Edw. 6. ca. 2.

Agnus Dei.

If any person (to whom any *Agnus Dei*, Crosse, Picture, Bead, or such superstitious thing from the Sea of Rome, or the authoritie thereof, shall be offered or deliuered) do disclose the name and dwelling (or place of resort) of such offerer or deliuerer, to any Iustice of Peace of that Shire, where he, to whom such offer or deliuerie is, shall be resiant: then that Iustice must (within fourteene dayes next after) declare the same to some one of the Queenes priuie Counsell, 1 3. Eliz. ca. 2.

Slanderous
newes.

Euery Iustice of Peace may (within one Moneth after the speaking or reporting, &c.) commit to Ward, any person, being vehemently suspected of saying, or reporting of any slanderous newes or tales, against the Queenes Maiestie, (vnesse he do put in Sureties to appeare at the next Quarter Sessions, or Gaole deliuerie) there to remaine, till he shall find Sureties for such his apparance. And may also (within one Moneth after such speaking, or reporting) receiue the accusation thereof, and put the same, and the names of the Witnesses in writing, and certifie it at the next Quarter Sessions, or Gaole deliuerie, 23. Eliz. cap. 2.

Disturbing of
Preachers.

If any Offendor (contrary to the Statute provided against the Disturbers of any Preacher)

cher) shall be arrested and brought before a Justice of the Peace, then he (vpon due accusation thereupon had by the sayd arrestor, or other person) shall forthwith commit the party so taken to safe custody, by his discretion. And within six dayes next after the accusation, he and one other Justice of Peace shall, &c. 1. Mar. Parl. 1. ca. 3. But enquire, if all this Statute be not repealed by 1. Eliz. cap. 2. in generall words at the latter end thereof.

Euery Justice of the Peace may (within *Egyptians* one Moneth after the arriuall) seaze all the goods of any outlandish persons (calling themselves Egyptians) that shall come into this Realme: and may also keepe the one moitie thereof to his owne vse, making account to the Queene in the Eschequer for the other moitie.

And euery person that can prooue by two credible witnesses before him that so seazeth, that any of those goods were craftily, or feloniously taken from him, shall be incontinently restored thereto before the partie that so sealed them, vpon paine of the double value thereof to be forfeited to such proouer, 22. H. 8. ca. 10. But note, that (after the Moneth) the offence is made Felonie, & then it seemeth, the Queen is to haue the goods wholy, 1. & 2. Phil. & Mar. cap. 4.

If any one Justice of the Peace doe ioyne Inrolment with

with the Clarke of the Peace, in taking the Inrolment of an Indenture of bargaine and sale of lands, tenements, or hereditaments, lying in that Countie where he is Iustice, it is sufficient, as it seemeth by the wordes of the Statute, 27.H.8.c.16.

Worke of
Waxe.

Euery Iustice of Peace may examine and search (by his discretion) such as do sell, or set forth to be sold, any Candles, or other works of Waxe, at higher price then after the rate of foure pence the pound, ouer the common price of plaine Waxe, betweene Merchant & Merchant: and may also punish them by forfeiture of the worke set forth to sale, and of the value of that which is sold, and by fine to the King, 11.Hen.6.cap.12. as it seemeth by the large wordes of that Statute.

Affise of
Fewell.

Any one Iustice of Peace, is warranted to set on the Pillorie in the next Market Towne to the place of offence, any person that hath broken the Affise of Fewell, and is convicted thereof, and is not able to pay the forfeiture, there to be at eleuen of the clocke vpon the Market day with a Billet (or fagot) bound to some part of his body: 7.E.6.ca.7. but consider, whether a Iustice of Peace, may conuict him of the said forfeiture, or no: for it seemeth by the wordes of the Statute, that he is rather a Minister, then a Iudge in that case.

Repaire to
the Church.

If any person (aboue sixteene yeares of age)

agge) do by the space of twelue Moneths, for
 beare to repaire to some Church, Chappell, or
 vsuall place of common Prayer, contrary to
 the tenor of the Statute (1. Eliz. cap. 2.) then
 any one Iustice of Peace of the Countie
 where such offendour shall dwell or be, may
 make Certificate thereof in writing into the
 Kings Bench, to the end, that the offendour
 may thereupon be bound in 200. li. at the least,
 with sufficient suerties to the good behavi-
 our for that his so long obstinacie, besides the
 other penalties 23. Eliz. cap. 1.

Any Iustice of Peace within that Countie, *Iesuite, and*
 in which any Iesuite, Seminarie priest, or other *Seminaries, &c*
 Priest, Deacon, or Religious, or Ecclesiastical
 person (mentioned in this Statute) shall a-
 rriue or land, may within 3. dayes after, take
 the submission, oath, and acknowledgement of
 him, touching his obedience to the Queenes
 Maestie, and to her lawes and ordinances
 provided in causes of Religion. 27. Elizab.
 cap. 2.

And euery subiect, hauing vnderstanding
 that any such Iesuite, Seminarie priest, or o-
 ther the abouesaid, shall be within any the
 Queenes Dominions, contrary to the mea-
 ning of this Statute, ought to discouer the
 same vnto some Iustice of the Peace (or other
 higher officer) within 12. dayes after such his
 knowledge, vnder the paine of a Fine and im-
 prisonment:

P. i.

prisonment:

priſonment: And that Juſtice of Peace, ought (within 28. dayes after ſuch diſcouerie made vnto him) to giue information thereof to one of the Queenes priuie Counſell, vnder the paine of 200. marks. 27. Eliz. cap. 2.

Pheſants and
Partriches.

Every Juſtice of Peace may examine offences againſt the Statute made for preſeruation of Pheſants, and Partriches, & againſt hauking in Cozne (if the ſame offences be not before lawfully heard, or determined otherwiſe) and may take bond of the offender with good ſuerties for his apparance at the next generall Sessions of the Peace, to anſwer to the ſaid offence, and to pay the penaltie, or to receiue the puniſhment due therefoze: and may alſo after conuiction and puniſhment of ſuch offender, in taking or killing Pheſants or Partriches, take like bond of him and ſuerties, that (for the ſpace of two yeares) he ſhall not offend againſt the ſayd Statute, 23. Eliz. cap. 10.

Plaints in the
Countie
Courts,

It ſeemeth that one Juſtice of the Peace, may (vpon complaint of the partie grieved) examine the Shirife, Vnderſhirife, and Plain-tife, concerning the taking or entring of plaints in their Countie Courts and bookeſ againſt the Statute: And if he find thereby any fault or offence committed, that ſhall ſtand for a ſufficient conuiction and attaindor, without any further enquire or examination: So
may

may he also examine the Bailife of the Hundred for not warning of the Defendant in such a plaint, according to his precept from the Shirife or Vnder-shirife, and if thereby he find any default or offence, that also shall stand for a sufficient condemnation. And the said Iustice must Certifie those examinations within a quarter of a yeare into the Eschequer. 11. H. 7. cap. 15.

The Certificate of one Iustice of Peace (signed with the Custom of the place) of the unloading and selling of Corne, Graine, or Cattell, carried by water from one place to another of this Realme, unto the Custom and Controller of the place where the same was imbarked, is sufficient and inough upon the Statute of forestalling, 5. Edw. 6. cap. 14: & 13. Eliz. cap. 25.

One Iustice of Peace may take out of Sanctuarie, certaine persons abiured thither, and others being indicted of some kind of offences (mentioned in the Statute) done after they become Sanctuarie men: and may commit them to the Gaole in the Countie where the Enditement is found, till they be tried. 22. H. 8. cap. 14.

No person shall (after that he shall be robbed) bring any action upon any the Statutes concerning Hue and Cry, except he shall first (within twentie dayes next before such action brought)

brought) be examined vpon his corporall oath before some one Iustice of the Peace of the Countie wherein the robbery was committed; inhabiting within or neare the Hundred where the robbery was committed, whether he do knowe any of them that did the Robberie: and if vpon such examination he do confesse that he knoweth any of them, then also shall he (before such action be brought) enter into recognisance before the same Iustice effectually to prosecute such persons (so known) by Enditement, or otherwise, according to the due course of the lawes of this Realme. 27. Eliz. cap. 13.

Malt.

If any Bailife, or Constable, of any borough, or other towne, shall find any Malt, made contrary to the Statutes (2. & 3. E. 6. c. 16: & 27. Eliz. c. 14.) then, with the aduise of any Iustice of Peace within that Shire, he shall cause the same to be sold, to such persons, and at such reasonable prices (vnder the common price of the market) as to his discretion shall seeme conuenient.

Watermen.

Euery Iustice of the Peace (as it seemeth) within the Shires next adioining to the river of Thamys, within his seuerall iurisdiction hath power (vpon complaint made vnto him) by the ouerseers and rulers of the Watermen and Wherryemen (or two of the) or by the masters of any such Seruants, both to examine, heare,

heare, and determine, all offences against the Statute, and to set at large him that shall be imprisoned by such ouerseers or rulers (if there be iust cause), and also by his discretion to punish those ouerseers and rulers that shall vniustly punish any person. 2. & 3. Phil. & Mar, cap. 16.

Every Iustice of the Peace, before whom any person (arrested for Manslaughter, or Felonie, or Suspicion thereof) shall be brought, ought (before he commit him to prison) to take the examination of such prisoner, and the Information of those that bring him, and to put the same (or so much thereof, as shall be materiall to prooue the Felonie) in writing within two dayes after: and to take bond of all such as do declare any thing (materiall to prooue the offence) to appeare at the next generall Gaole deliuerie, and to giue euidence there against the offender. 2. & 3. Phil. & Mar. c. 10. Examination of Felons.

Here you may see (if I be not deceiued) when the examination of a Felon began first to be warranted amongst vs. For at the common Law, *Nemo tenebatur prodere seipsum*, and then his fault was not to be wrung out of himselfe, but rather to be discouered by other meanes and men.

And here also is occasion iustly giuen me, to draw the threed of my speech a good deale further, before I conclude this part concer-

ning the power of any one Iustice of the Peace. For, whereas this law requireth, that he should not onely take the Examination of the fact, & bond of the Informers, but also that he do therewithall make choise of such things as be materiall to mooue the suspicion, or to prooue the offence: It seemeth necessary, both to shew him the maner of the Examination, and forme of the Bond, and withall to let him see, what things be materiall to induce this Suspicion, & what sortes of Felonies there are wherewith he hath to deale: to the end, that he may not only discerne them from other facts that cary some resemblance of them: but also the better vnderstand, when to commit to prison the partie accused before him, and when he shall not need to trouble himselfe so farre with him.

Examination,
vpon oath,

And first, because some Iustices of Peace, do vse to take this Information (of the bringers) vpon their oaths, & some others doe receiue it without any oath at all, Let vs see what is woont to be said on either side, that euery man may the better see what way to incline and follow.

They which take this information, or examination (for this Statute doth vse the words indifferently) without any oath, do say, that if the makers of this Statute had meant that an oath should be taken, then would they haue expressed

pressed so much : euen as the Statutes for Bankrupts (34.H.8.cap.4: & 13.El.cap.7.) the Statute of Accountants (5.R.2. ca.13.) the Statute of Labourers (2.H.5.ca.4.) and the Statute of choosing Knights of the Parliament (8.H.6.c.7.) haue done before : in all which Statutes, examination by oath is giuen by expresse and plaine words.

But they of the contrary side, do strongly defend their exacting of an oath, by the example of the Iustices of the higher Courts : and do alleage, that whereas the Statute (5.H.4.cap.8.) did ordaine (without any mention of oath) that in an action of Debt vpon the arrearages of account, the Iustices should haue power to examine the Atturneys and others : the Iustices of the Bench do vse in that case to minister an oath to the examinares, as it appeareth, 19.H.6.4: & 35.H.6.5.

The like (say they) is daily done and practised in all the examinations of Summoners, Viewers, Shirifs, Clarkes, and other Officers, that do happen in the higher Courts at Westminster. And *M. Brooke* (tit. examination 32) is of the opinion, that euery examination is to bee handled vpon oath. And therefore (belike) the Statute (2.E.6.c.13) giuing power to the Ordinary to examine a man for his personall Tithe, excepteth an oath, as though otherwise he might haue required it.

Besides all this, they adde for reason, that if these informers be examined vnder oath, then although it should happen them to die before the prisoner haue his Triall, yet may their information be giuen in Euidence, as a matter of good credite : whereas otherwise it would be of little or no weight at all, and thereby offendours would the more easily escape.

To this latter opinion I my selfe am ready to subscribe, as well because I haue heard some Iustices of Assise deliuer their minds accordingly, as also for that I haue found by experience, that (without such an oath) many informers will speake coldly agaynst a Felon before the face of the Iustice, when as they haue first made their bargaine with the offendour (or his friends) before the Iustice shall heare of the cause.

The taking of
the Bond.

The Bond that is spoken of, in this Statute, & in some others, seemeth to be meant of a Recognisance, to be acknowledged to the Queenes vse, with Condition for the performance of that, which the Statute appointeth. For (as before hath bene sayd) euen as in the case of Suertie of the Peace and Good Abearing, the Iustice of the Peace taketh usually a Recognisance, and is warranted so to do, being made a Iudge of Record as touching matters of the Peace, though he hath

no full words for it either in any Statute, or in the Commission: So, being authorized by this Statute to deale in this matter, he may be well sayd to haue therein implied (by good Congruence) a power to Record the acknowledging of a summe of money to be forfeited to the Queene, vpon not performing the Condition of the same.

The Partie therefore that informeth against the Prisoner, may be thus bound, in a single Recognition.

Memorandum quod 3. die Septemb. Anno **Kanc.**
 regni Domine nostre Elizabetha Dei
 gratia, &c. 29. D. E. de Brasted, in comita-
 tu predicto Yeman personaliter coram me
 Thoma Potter, vno Iusticiariorum &c. ad pa-
 cem, &c. assignatorum constitutus apud Bra-
 sted predict. recognouit se debere dista Do-
 mina Regina decem libras bone & legalis mo-
 nete Anglie, de bonis & catallis, terris &
 tenementis suis fieri & leuari ad opus di-
 ste Domine Regine, heredum &
 successorum suorum, si dese-
 cerit in conditione in-
 dorsata.

Th. P.

And

And with such a Condition.

THe condition of this Recognisance is such: whereas one *A. B.* late of *G.* Labourer, was this present day brought before the sayd Iustice by the aboue bound *D. E.* and was by him charged with the felonious taking of twentie Sheepe, of him the sayd *D.* and thereupon sent by the sayd Iustice to the Queenes Maiesties Gaole: If therefore he the sayd *D.* shall and will at the next generall Gaole deliuerie (to be holden in the sayd Countie) preferre, or cause to bee framed and preferred, one bill of Inditement, of the sayd Felonie, agaynst the sayd *A. B.* and shall and will then also giue euidence there concerning the same, as well to the Iurours that shall then enquire of the sayde Felonie, as also to them that shall passe vpon the Triall of the sayd *A. D.* That then, &c. Or else &c.

The causes of
Suspicion.

Touching the pointes that may ingender Suspicion, I need not to say much knowing that I speake to men of discretion and wisdom, to whome *Omne mendacium est pellucidum*: And yet, seeing that *Initia debent ab arte proficisci, quanquam cetera facile comparabit exercitatio*, I take it not vnserviceable

serviceable to insert heere, such a Brieft (or
minute) thereof, as I haue collected out
of Cicero, and others, whereunto
all the rest which the wit of
of man may inuent
will easilie be
referred.

1. Parents: as if they were wicked, and given to the same kind of Fault.

2. Sexe: for some offences are more commonly found in the one Sexe, and some in the other.

3. Education in his
Childhood.
Youth.
Mans state.
Whether idle, and without honest occupation: or riotously in diet, play, apparel: whether brawling, quarrelous, light-fingred, or bloudie-handed, &c.

1. The disposition of the person, by

1. Will to do the fact, which is gathered by

2. The cause inducing him to undertake it, which is either

1. Forcible (or impulsive) as, for reuenge of former displeasure, or vpon sudden offence.

2. Perswasive: as for hope of gaine, whereof he is needy, or greedie: or for the eschewing of any hurt, whereof he was afraid.

1. Precedent, as his

1. Wit: subtile: courage of minde: meete to enable him.

2. Strength, or swiftnesse of body: to warrant him.

3. Countrie: kindred: wealth: friends: office: to counter him.

The Examination of an offence, is a coniectional state

of a cause:
and it is to
be weigh-
ed by mat-
ter, either

2. Pre-
sent, or
instant,
as the

Time: as being very early, or late, which be fit for
the doing of euill that will not abide the light.
Space, sufficient to performe the feare.
Place, conuenient and meet for the act: as Wood,
Dale, house, or other place of aduantage.
Occasion, rightly taken, as which being omitted, the fact could not follow.
Comparison, as that none but he, or none so commodiously as he, could commit
the fact.
Hope, to haue it concealed by these aduanrages, or to escape with it.

Common voyce and fame, against him, that he did the offence.
Witneses, that prouoe it, either probably, or necessarily.

Signes, which discouer him: as by hauing blood, or the goods about him: his fly-
ing away: his blushing, or change of countenance: his being in company with
other offenders: his offer of composition: the measure of his foote: the blec-
ding of the dead body, &c.

3. Subse-
quent, as

Confession, as his owne doubtfull, or inconstant speaking: his repugnancie with
others speech, &c.

The *Mittimus* of the prisoner, after his examination taken, may stand thus.

Kanc.

THOMAS POTTER, one of the Iustices &c. to the Keeper of her Maiesties gaole at *Maydstone* in the said Countie, &c. greeting. I send you herewithall the bodie of *A.B.* late of *C.* Labourer, brought before me this present day, and charged with the Felonious taking of twentie sheepe, which also he hath confessed vpon his examination before me. And therefore these are (on the behalfe of our sayde Soueraigne Lady) to commaund you, that immediately you receiue the sayd *A. B.* and him safely keepe in your sayd Gaole, vntill that he shalbe thence deliuered by due order of her Maiesties lawes. Hereof faile you not, as you will answer for your contempt at your owne perill: Yeouen at &c.

The diuision,
and discourse
of Felonies.

The Examination of the Prisoner, the bond of the accusors, and the Notes of suspicion, thus bewrayed. It followeth that I enter into the diuision and discourse of the Felonies themselves. For the better vnderstanding whereof, I will heere deliuer (so shortly as I can) such helpes as haue come to my hands, for the knowledge of all maner of Man-slaughters;

slaughters, and other Felonies that either were at the Common law, or haue bene since declared by whatsoeuer Statutes. But before I step any further herein, I am to pray pardon of the Reader, if I shall neither set Manslaughter before Felonie, as this Statute doth: nor shall vse either of both those words in so narrow a signification, and meaning, as commonly other men do take them. For howsoeuer the course of these offences may fall out to him, that shall consider how much the one of them exceedeth the other in grauitie, and degrees of hainous weight: yet to me, that am desirous to follow some order, and Methode of discourse, the generall must alwayes go before the particular: and therfore, refusing the common vse of the wordes at this day, I will (for orders sake) take them in their owne more ancient, and proper significations, vsing Felonie, for the *Genus* (or general) to all those other fell, and hainous offences, that our lawe (for the most part) doth punish by the paynes of death: and vsing Manslaughter, as a sort of Felonie, that comprehendeth vnder it all manner of felonious Homicide whatsoeuer.

And, to prooue that I do not herein swarue either from the naturall signification of the words themselues, or from the ancient vse and acceptation of them. I say, that first those hainous offences, are called Felonies, because they

The right vse
of the Words,
Manslaughter,
and *Felonie.*

they be committed *Felleo animo*, with a fell, furious, and mischievous mind and intent.

And, that before the Statute (13. R. 2. cap. 1.) a pardon of all Felonies, was availeable both for murders, and for some treasons, also: as may appeare, Lib. Ass. 22. pl. 49: 1. Edw. 3. 24: Stanford, 102: & Commentar. 592: And, that the Statute of *Marlebridge* (cap. 25) speaketh plaineely herein, saying, *Locum habeat murdrum, de interfectis per feloniam tantum.*

Again, as touching Manslaughter, that word (as every man may see) doth most aptly, and significantly render and expresse unto vs, the Latine *Homicidium*: which word, both *H. Bracton*, and *H. Stanford* do rightly vse, as the generall as well to Murder as to the rest: howsoever unskilfull men will needes restraine it (now adayes) to manslaughter by Chance-medley alone.

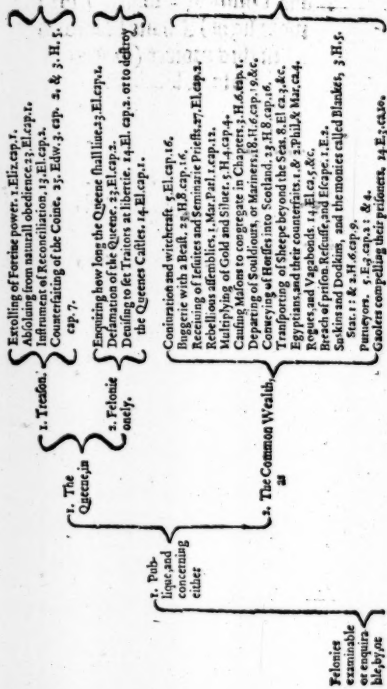
Neither doe I doubt, but that this present Statute, when it saith, (Manslaughter, and other Felonies) doeth thereby make Manslaughter, a sort of Felonie, (for so the worde other doeth emplye) and doeth also therewith all comprehend Murder vnderneath it: seeing it cannot be thought, but that this Statute requireth examination, as well (if not more) in the case of Murder, as it doeth in the other lesse hatefull Homicides.

This

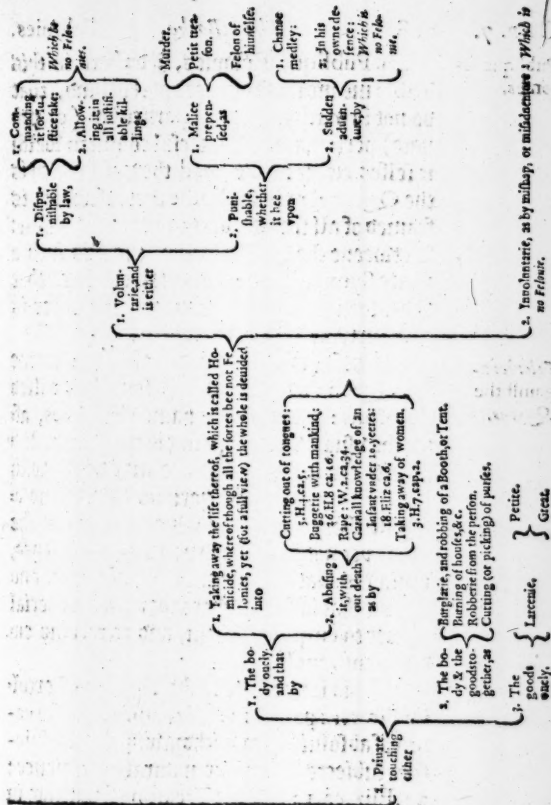
This excusation being thus made, I will
now adventure (vnder the name of Felonie)
to runne thorow all the sortes of Manslaugh-
ters and Felonies within the meaning of this
Statute, according to the Order of mine
owne Diuision : which (for the
more light) I haue bestowed
in this proiect (or Ta-
ble) folowing.

Tuesday the
fourteenth daie
of January anno
dⁿ mⁱ 1611 last

The Division of those Felonies, wherewith Iustices of the Peace are authorized to deale.



Before the
Justices of
the Peace,
be either



Publique felonies.

By Publique Felonies, I do here in this Table meane those offences of this kind, that do not so much touch any particular (or priuate) person, as the vniuersal common welch it selfe: either in the head thereof (which is the Queene) or in the bodie thereof, which is framed of all the Subiects within the realm: Betweene the which twaine, there is such a neare Sympathie, and mutuall feeling, that whensoever the one is offended, the other is also hurt, and doth suffer with it.

Felonies against the Queens.

Of these (which immediately do concerne the Queene and the estate) some bee called Treasons: and others be named Felonies, after the vsuall vnderstanding of that word. And albeit, the Iustices of Peace may deale with all Traitors, as with persons that offend against the peace of the Queene, and of the land: yet not in the very point of the offence, sauing in that of counterfaiting of mony, and sauing that in some others they haue a special power to enquire of them, and to receiue euidentments onely.

Of this latter sort, is the Treason of extolling forein power: 1. Eliz. cap. 1. the Treason of absolving (or withdrauing) her Maiesties subiects from their naturall obedience: 23. Eliz. ca. 1: and the Treason of putting in vye any instrument of reconciliation, gotten from the See of Rome. 13. Eliz. cap. 2.

As

As for that auncient Treason of counterfai-
ting the Queenes money (3.H.5.c.7: & 25.
E.3.ca.2) it is (by good construction) exten-
ded, both against him that doth counterfai-
the mony, (though he utter it not) and against him
that procureth the counterfai-ting, though he
do neither make nor utter the same: 19. H. 6.
47: 6.H.7.13: & 1.R.3.1. But willingly to
comfort the counterfai-ter, is taken but for Mis-
prision onely. *Collect. Diar.* 296.

Those Felonies concerning the Queene,
arise thus: first, the Felonie of seeking by un-
lawfull meanes to know how long she shall
live, or who shall raigne after her. 23. Eliz.ca.
1: then the setting forth in writing of any
false and slanderous matter to the defamation
of her, 23. Eliz. cap. 2: and the deuising to set
at libertie any person endited of Treason con-
cerning the Queenes person: or to take, or
keepe from her, or to destroy any of her Ca-
stles, 14. Eliz. cap. 1. & 2.

Hitherto of Felonies concerning the head
of the common wealth: now follow those that
are against the body of the same. Coniurati-
on of wicked spirits and witchcrafts; against
the law of God and the Statute, 5. Eliz.c. 16:
The sinne of Buggerie committed with a
beast, against God, nature, and the Lawe, 25.
H.8.ca.16: Receiuing of Iesuites, or Semi-
narie priests, contrary to the Statute 27.

*Felonies a-
gainst the
Common
wealth.
Coniuration.*

Buggerie.

Iesuites.

Q. iij.

Eliz.

Rebellious assemblies. Eliz. cap. 2: Rebellious assemblies, against the Law, 1. Mar. Parl. 1. ca. 12: practizing in the Arte of Multiplication of Gold or Silver, condemned by the act. 5. H. 4. ca. 4: The causing of Housholds to congregate themselves in Chapters, restrained by a speciall law. 3. H. 6. ca. 1. The departing of Souldiours, Harriers, or Gunners, from their Capitains, prohibited by the Statutes 18. H. 6. cap. 19: 2. & 3. E. 6. ca. 2: 4. & 5. Phil. & Mar. ca. 3: & 5.

Horses. Eliz. cap. 5: The conueying of Horses into Scotland, and the second offence of transporting Sheepe beyond the Seas, agaynst the Lawes, 23. H. 8. ca. 16: 8. Eliz. cap. 3: & 1.

Sheepe. Eliz. cap. 8: The disguised life of the Egyptians, and the idle wandering of convicted Rogues, forbidden by the acts. 1. & 2. Phil. & Mar. ca. 4: 5. Eliz. ca. 20: 14. Eliz. cap. 5: & 18. Eliz. ca. 3: All these (I say) be Publique Felonies, whereby the vniuersall common wealth, doeth (or may) receiue detriment, and for which hardly any one singular person can commence his priuate sute, or action.

Breach of
prison.

And of like condition to these, be those Felonies that do grow by the breaking of imprisonment for any Felonie: the which also are grounded chiefly vpon the Statute. 1. E. 2. *De frangentibus prisonam*, and are so restrained to Felonie by it. whereas (at the common law) he was generally a Felon that brake the prison,

prison, although the cause were no Felonie for which he was committed thither. If or, Imprisonment, is the putting of a person from his owne libertie, into the custodie of the Lawe, to answer to that which is objected: and therefore, to breake the prison, is to flie from the triall of law, and woorthily adiudged a Publique felonie. Out of this one fact, there groweth sometimes a treble offence and Felonie: namely, one in the prisoner himselfe, which is most properly called the Breach of prison: another in him that helpeth the prisoner to get away, which is commonly termed Rescuffe: and a third, in the officer, or partie whatsoever, by whose wilfull default he is suffered to goe, and that is named an Escape, 10. E. 4. 17.

The Breach of prison, and Rescuffe do many times concur, and now and then an escape doeth appeare without the company of any of them both: Nowe, (as to this purpose) it is called a Breach of prison, whether it be an escape, out of the Gaole, or out of the stockes, or out of the possession of any person that hath the keeping of the partie arrested for Felonie, although he be not thereof endited before. *Corone Fitz. 158. Collection Diar, fol. 99: & 312:* and so is it, if a man take the sanctuarie of the Church for a Felonie: and do then flie from it: for, he is there in the custodie of the Towne. *Corone Fitzh. 290.* But if the gaoler, or any

other that hath a Felon vnder arrest, do willingly suffer him to goe at large, then resteth the felonie in them onely, and not in the prisoner: who cannot be sayd to breake the prison, out of which he is freely dismissed, Stanford, vpon the case, *Corone Fitz.* 149.

On the other side, if a stranger doe either breake the prison, and let out one that is there for Felonie, or do rescusse such an one as is vnder arrest for Felonie, then is it Felonie as well in the stranger, as in the prisoner himselfe, *Corone. Fitzh.* 48: 134: & 158: Howbeit, if that stranger shall but offer disturbance onely before the arrest, so that the arrest is hindered thereby, then will it procure no Felonie in him: because the other was no more a prisoner, then if he were attached onely, and were not yet brought vnder hand, *Corone, Fitz.* 333: & *Stanf.* 31. & *lib. Ass.* 27. pla. 9: against the opinion of *D. Fitzh.* in his Iustice of Peace. And for the same reason, if a man receiue a Felon, knowing the Felonie, and then do willingly suffer him to escape, this sufferance to escape is no felonie of it selfe, howsoeuer the receiuing of him may make him an accessarie, 9. H. 4. 1: & *Stanf.* 33: Neither is it Felonie for a man willingly to suffer one to escape that is arrested for an act, which was not then Felonie, but by matter consequent fell out so to be: As, if Iohn strike Richard, for which the

the Constable arresteth him, and after ward letteth him go, and then Richard dieth of the blow within the yeare. *Commentar.* 401:11. Hen. 4. 11: much lesse, to suffer one to escape, that is arrested for the killing of an other, *Se defendendo*, or by misfortune, or for petite Larcenie, or that had his iudgement to be deliuered, paying his fees: because none of these do amount to Felonie.

But now, to pursue those Publique felonies that do yet remaine. Those Felonies of Gallyhalfpence, Sufkins, and Dodkins, 3. Money. H. 5. Stat. 1. and of Blanke monies, 2. H. 6. ca. 9: whereof there is little (or none) vse at this day amongst vs, may stand in this Register of publique Felonies. And albeit the embezzelling of any Record, doth immediatly touch Records, some one particular mans interest: yet, knowing that when it is once a Record, euery other man hath accessse vnto it, and may vse the help of it, I would reckon that offence (adiudged felonie by the Statute 8. H. 6. ca. 12.) amongst the rest of publique Felonies, if the Iustice of Peace had to do with it.

There may be more doubt of the Felonies by purueiours, abusing their office agaynst the Statutes, 4. E. 3. ca. 3: 25. E. 3. cap. 15: 30. Purueiours. E. 3. ca. 4: 26. E. 3. ca. 5. & 6: & 7. R. 2. ca. 8: and likewise of those Gaolers, that (by hard Gaolers, and cruell custodie) compell their prisoners to become

become approouers, against the act, 14. E. 3. cap. 10: because in all these, some particular person is chiefly pinched: But yet, forasmuch as they do it by colour of their offices (which are Publique) I can bee contented to range them amongst publique Felons also.

Private Felonies, and their diuision.

From these common, and far spreading offences, I must sal to those that I called Private, in respect that particular men are immediately (and almost onely) wronged by them, Sauing that the law doeth also take some auengement of the crime, least impunity in the offenders, should embolden others to commit the like.

These (as appeareth in the Table before) do either run to the body alone, or to the body and goods together, or els to the goods only.

Homicide.

Againe, seeing that the body is either touched in the point of life, or by other violent, or fleshly abuse that bringeth not death, I am first to entreat of Homicide, which I called Manslaughter, and therein to note some few things that be common thereto, and afterwards to drawe it into the sundrie sortes, or kindes also.

In all these sorts of voluntarie Manslaughter, being exempted from the fault of Felonie (as that is, which we say to be done *Se defendendo*) there is no person to be punished, to whom the law hath denied a will, or mind to do

to the harme: as a mad man: he that is borne
both deafe, and dumbe: nor an infant vnder
the age of 12. yeares, vlesse it may by some
evident token appeare, that he had understan-
ding of good and euill: for then, in him *Ma-*
litia supplebit aetatem: and to these (by the opi-
nion of M. Bracton) you may adde the Luna-
tique during for a fourth, *quem tuetur* (as he
saith) *consilij inopia*, 3. H. 7. 1: 21. H. 7. 31:
Corone Fitz. 193: & lib. Ass. 26. pl. 27.

Moreouer, to hurt a woman great with
child, whereby the child either dieth within
her body, or shortly after that she is deliuered
of it: or to strike any person so, as he dieth not
thereof, till the yeare and day be fully past:
will not wrap a man within the danger of
these Felonious Manslaughters: lib. Ass. 3. pl.
2: 1. E. 3. 24: 3. H. 7. cap. 1: & Corone Fitzh.
303. For in the former case, the child is not
reckoned to be *In rerum natura*, vntill it bee
borne, though M. Bracton (Fol. 121.) taketh
it to be Homicide if the blow be giuen *Post-*
quam puerperium animatum fuerit: And in the
latter case, it cannot reasonably be alleaged,
that the man died of that blow, which he recei-
ued a whole yeare before.

Lastly, if any person shal be brought before
a Iustice of the Peace, and charged with any
of these Homicides (except that which is done
in the orderly execution of a iudgement) it shal
be

be his part (as I thinke) to commit him to prison, or at the least (if the cause will so suffer) to ioyne with some other Iustice in the Bailement of him: to the ende, that the partie may be discharged by arraignment and Triall: without the which (or other finding of the trueth before the Coroner, or otherwise) I see not how the Iustice of Peace may safely dismisle him. And for this purpose, I referre you to the Statute of Gloucester, cap. 9. and Corone Fitz. 288.

Homicide,
commanded
by law.

But now to the sortes of Homicide: Not euery Manslaughter (saith *W. Bracton*) deserueth punishment: For it may be done for Iustice sake, and then it is no fault at all, so it be done syncerely, and without delight in shedding of blood.

And therefore, neither is the Iudge that by order of iustice condemneth the guiltie man to death: nor the officer that orderly executeth that iudgement according to his warrant: guiltie of any offence, for which vpon examination he ought to be committed to prison: Seeing they haue done no more then lawe commanded.

Homicide al-
lowed by law.

Next vnto this, is the case of those whome law alloweth to slay a man, and holdeth them unpunishable for it: whether it be vpon a certaine necessity for the aduancement of Iustice, or for the defence of his house, or goods, or for the

the more terror against offenders. And therefore, the Shirife, Bailife, or any other, that hath a Warrant to arrest a man endited of Felonie, may iustifie the killing of him, if otherwise they cannot take him, 22. lib. Ass. pl. 55. and so may any other man, that followeth Felons vpon the Huy and Cry raised, if they will not peece themselves, but stand at defence, or flie away: by the opinion of Thorpe, Tit. Corone. Fitzher. 261: and so is it also, if a man that is arrested for Felonie, do (as he is in carrying to the Gaole) offer resistance, and flie: for then those that haue the conduction of him, may without blame kill, if they cannot otherwise recouer him, Corone. Fitzher. 288. & 328.

And if the Iustices of Peace come to arrest Riotters, and they resist, whereby one of the Riotters is slaine by any of the Iustices, or their seruants, or by any other comming in their aide, that is iustificable, and allowed by law: because in this, and the former cases, the killing proceedeth vpon a necessitie, for the execution of Justice, which otherwise should be left vndone. Of like account is it, when a Gaoler doth slay any of his unruly prisoners that shall assault him, Lib. Ass. 22. pl. 55. But whether this rule will hold, when the arrest is onely for debt, or such like, it is good to be aduised,

If the Iustices of the Peace, or any other (lawfully authorized) doe assemble any number of men for the suppressing of any persons unlawfully assembled contrary to the Statute (1. Mar. Parl. 1. cap. 12.) and be driven to set vpon them, and thereby any of the offenders be slaine, this slaughter is warranted, both in the Iustices themselves, and for euery other of their company, by the same Statute.

And if any Justice of the Peace, or any other, or such as be in their company for their aide (after Hoy and Cry made vpon offenders within their charge to yeeld themselves, which neuertheless will make resistance, or flie) do without former malice kill any of them, they are neither to be imprisoned nor to forfeit any thing for it, *Stat. de malefactoribus in parcis.* 21. E. 1. So, if any do attempt to rob, or murder any person, in his dwelling house, or in (or nigh) any common high-way, cart-way, horse-way, or foote-way, or feloniously to breake into his dwelling house in the night time: and in this attempt the partie, or his seruants then with him, do kill any of the misdoers, he, or they shal forfeit nothing thereby, 24. H. 8. cap. 5. and so (in effect) was the common law before that Statute, as may appeare, 26. lib. Ass. pl. 32. & Corone. Fitz. 330: 305: & 261: and so also was the Romaine lawe of the twelue Tables: *Nocturnus fur quoquo modo,*

*modo, diurnus autem si se telo defenderit, impu-
ne occiditor.* For of necessity men must either
defend themselves, or be oppressed by these
and such other wrongfull invasions. And
therefore, if there be malice betweene
A. and B. so as they haue fought together:
and after ward they meet suddenly in the high
way, or in the streete of a Towne, or Ctrie; and
A. draweth his weapon, and chalengerth B. to
fight, B. saith that he will not haue to do with
him, and goeth to the wall from him, and ther-
of taketh witnesse of the standers by: and yet
notwithstanding A. followeth, and striketh at
B. and then B. striketh againe, and killeth him:
In this case it was adiudged (15. Eliz. Reg.)
that B. shall go quite by this Statute, without
any forfaiture. Report Crompton.

We come now to Manslaughter vpon pre- Murder.
meditate malice, whether it be executed vpon
others, or vpon the partie selfe. That which is
generally committed vpon any other, be-
tweene whom and the slayer, there is no speci-
all ligeance (or soueraigntie) is now called
Murder, and the other petite Treason.

In the old time, every killing of one man
by another, was (of the effect) called Murder,
because death ensued of it. For (as *Postellus*
noteth) of the Hebrew worde Moth came the
Latine *Mors*, and thereof our elders (the
Saxons) called it *Monð*, and *Monðon*, as
we

we now sound it.

Afterward (about the time of H. Bracton) murder was restrained to a secret killing only: and therefore he, in the definition of Murder saith, that it is *occulta occiso*, &c: with whom Britton agreeth also. But, since the Statute (14.E.3. ca.4. by which the presentment of Englesherie was taken away) Murder is taken in a middle degree, neither so largely as it first was, nor so narrowly as it afterward became to be. For, Murder is now construed to be, Where one man of malice premeditated killeth an other feloniously, that liueth within the Realme vnder the protection of the Queene, whether it be openly, or priuily, and whether the partie slayne be English, or alien. Wherein it is carefully to be obserued, that the wordes (of malice premeditated) do make the true difference betweene this, and the other voluntarie Manslaughters: so that, to make the offence Murder, it is of necessitie, that there be a precedent malice, and the same either apparant, and betrayed by the partie himselfe, or else implied and supplied by the vnderstanding of the law.

And therefore, if two persons do mutually beare malice the one against the other, and (meeting by chance) they agree to go into the field to fight together, and thereby the one of them is slaine, this is manifestly Murder in the

the other : Report Dalyson.

So, if two (of malice forethought) lie in a wait the one to kill the other, and thereby the one of them doth kill the other, this is Murder in the killer, without respecting which of them gaue the first blow, by the opinion of Sir Rob. Catlin late chiefe Iustice, as Crompton reporteth.

And if a man of premeditate malice, striketh at another, and after in the sight flieth to a wall (beyond which he cannot goe) the other pursueth him to the wall, and is there slaine by him that began the affray : this seemeth to be Murder, notwithstanding his flying to the wall, by the opinion of Catlin chiefe Iustice, and others : for he slew the man in the same malice, wherein he did assault him. Report Crompton.

And if Iohn and William do fight together (by agreement) vpon their former malice, and Iohn woundeth William : and afterward they meete againe vpon the sudden, and (falling to fight) William slaieth Iohn, that is Murder in him, by the opinion of Catlin chiefe Iustice, as Crompton reporteth.

Nowe, as all this is meant, where the former malice is apparant : So, many times the law doth (by the sequele) iudge of that malice which lurked before within the partie, and doth accordingly make imputation of it. And

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therfore, if one do (suddenly, and without any outward shew of present quarell or offence) draw his weapon, and therewith kill an other that standeth by him : the lawe iudgeth it to haue proceeded of former malice meditated within his owne mind, howsoever it be kept secret from the sight of other men. Dalyson.

The ancient law that measured the fault, not by the euent, but by the intent, will, and purpose of the offender, tooke it for Felonie (saith *M. Stanford*, fol. 16. out of the booke 3. E. 3.) in the owner of a beast that killed a man, if so be that the owner did know it to be accustomed to do harine, and did not tie it vp, or otherwise restraine it : but that case (3. E. 3. which you may see *Corone Fitz.* 311.) goeth not so farre (as I thinke) but ouely saith, that if the owner were aliuie, he should be arraigned of the death, and amerced towards the King. Againe, *Britton* (fol. 14.) hath the case, that if one which is not a Phisition or Surgeon, wil take vpon him to cure a sicke or wounded man, which dieth vnder his hand, it is Felonie : and *Thorpe* (43. E. 3. 33.) saith that he knew one to be endited accordingly : But the Statute (34. H. 8. ca. 8.) leaueth so great a libertie of such practise to unskilful persons, that it will be hard now to make any felonie in such a case. Howbeit, if any of these two latter offences should be drawen to Felonie, then

I see not but that the same must be accounted Murder, in respect either of the bold presumption, or of the will to do harme, which doeth amount to malice.

And it hath bene adiudged Murder, when a man hath drawen his weapon, and killed either a known officer, or one that had & shewed sufficient warrant to arrest him for debt only. So, if a harlot will take the child whereof she is newly deliuered, and couer it with leaues, and let it lie abroad, whereby vermine destroyeth it: and so likewise, if the sonne will take his sicke father against his will out of his house, and cary him in the cold aire to another place, whereof he dieth. Fitz. enditement 3: or if the officer will behead him that is adiudged to be hanged: or if a priuate man will kill him without any warrant: 35. H. 6. 58: & 27. lib. Ass. pl. 41: or if a Gaoler kill his prisoner by ouer hard keeping. Britton fol. 18.

Againe, it is taken for a rule (by M. Brooke 4. & 5. Phil. & Mar.) that wheresoeuer a man goeth about an vnlawfull acte, as to beate a man, or to disseise him of his lands, &c. and doe (in that attempt) kill him, it is Murder: because the lawe presupposeth that he carieth that malicious mind with him, that he will achieve his purpose though it be with the death of him against whom it is directed. And therefore, if a thiefe doe kill a man whom he neuer

saw before, and whom he intended to rob one: ly, it is Murder in the iudgemēt of law, which supplieth a former malicious disposition in him rather to kill the man, then not to haue his money from him. *Comment. 474.*

And if a man commaund his seruant to beat an other man, which doeth it in his presence, and the partie dieth thereof, it is Murder in them both, *ibidem 475.*

It appeareth in H. Dalifons Report (4. & 5. Phil. & Mar.) that a Precedent was shewed to the Iustices, that whereas a man entered into an other mans Orchard of his owne head, and there tooke peares from a tree, and in the doing killed the owner that rebuked him, it was adiudged Murder & he was hanged for it. And of like sort is it, if Riotters or such as be otherwise unlawfully assembled do kill any of those that come in aide of the Shirife or Iustices of the Peace, for the repressing of them.

Furthermore, the law (not thus contented) doeth many times extend this murdering malice, towards other persons then the offender may seeme to bend it: yea, and to punish it in some, that haue a shew to be very far from it. And therefore, if a man (of his former malice agaynst one) do shoot at him, and thereby killeth an other, with whom he was not offended, yet is he a Murderer, for the mind that he bare to murder him agaynst whom he dyetwe
his

his arrow. *Comment.* 474. So, if two fight vpon premeditate malice, and the one of them slayeth the seruant of the other that fighteth in defence of his master, he is guiltie of Murder: and yet he had no former malice agaynst the seruant. *Comment.* 101.

And if two fight vpon malice fore-thought, and in their fight a stranger is killed that laboureth to depart them, it is Murder in him that killeth him, if it may be discerned, and if not, then in them both. *Corone*, Fitzh. 262. & *Dalyson*, & *Collect.* Diar. 228.

But to go further, the Husband meaning to be rid of his wife, offereth her a popsoned apple to eate, and she (not seeing the danger) giueth part thereof to her little daughter that standeth by in the presence of the husband, who (to auoide the suspicion) suffereth her to eate thereof, and she dieth: this was adiudged Murder in the husband, for his wicked intent against his wife: and yet the case was, that he loued his daughter dearely. *Comment.* 474. & *Statut.* 1. E. 6. cap. 12. by which all wilfull killing by popsoning, is adiudged Murder of malice prepensed.

So, if a man lie in a waite by the way to kill A. and (mistaking the man) he killeth B. as he commeth the same way, this is Murder, *ibidem*.

Againe, all such as be present, and aiding,

abetting, or comforting him that committeth a Murder, be principall Murderers in the eye of the law, as well as he is by doyng the deed, though they strike neuer a stroke therein: for the law draweth the stroke of the murderer to be the stroke of them all that be present, and do assist him: 4. H. 7. 18: & *Comment.* 100.

And therefore, if Hunters doe enter into a parke, and do agree to kill any man that shall resist them, and one of them (being out of the sight of his fellowes) doeth run vpon the keeper, and killeth him: this will make all the rest of the Hunters to be principall Murderers, as well as him that gaue the deadly blow. *Dalyson.*

And (to giue one example of both these last Rules) the Case was (4. & 5. Philippi & Maria) that George (hauing conceived a displeasure against Richard) assembled sundry persones, and came in riotous sort to the house of Richard, of purpose to fight with him, but not with the mind to kill any man: and vsing there some quarellous speeches together, a kinde woman to them both traueled indifferently to appease them, and was suddenly stricken on the head with a stone that was thowen ouer a wall by one of the seruants of George, whereof she after ward died. And (by the opinion of all the Iustices, and others) it was declared, vpon long aduise, that
if

if she came on the part of Richard, and not as a stranger to the matter, then this killing of her was Murder in George and in all his complices: but if she came as a stranger, and indifferent to both the parties, yet by the better opinion it was thought to be Murder in George and all his company, because they came with a malice agaynst the person of Richard, and in the execution of that malice this death ensued. Report Dalison with which sir James Diar in his collections both not altogether agree.

Now it followeth, to speake of wilful Man-^{Petite Trea-}
slaughter committed by Treason which is a ^{son.}
sort of Murder: and therefore, howsoever it ex-
ceeds Murder in the grauitie of the crime (as I
saye) yet in Methode, and true order of hand-
ling, it must come after it, as being the lesse ge-
nerall. It is of two sortes, whereof the first is
called high, in respect of the Prince which is
the highest person: and thereof I shall not
need to intreat further then I haue spoken al-
ready. The other is termed petite, in regard
of the inferioritie of the persons against whom
it is committed: and they be either Ecclesia-
sticall or Laie: as it is declared by the Sta-
tute (25.E.3.cap.2.) which is but an affirma-
tion of the common law.

So that, if a clarke doe maliciously kill his
Prelate (or superiour) to whom he oweth obe-

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dience:

dience: or a wife, her husband: or a seruant the master, or maistresse, (who haue a ciuile soueraintie ouer them:) this will be Petit Treason, *lib. Aff. 12. pl. 30: & 22. plac. 49: Corone Fitz. 383: 19. H. 6. 47: & 25. E. 3. c. 2.*

And albeit there be a naturall obedience, due from the child to the parent, whereby it might seeme, that the wilfull and malicious Murder of the parent by the hand of the child should as well be sorted in the range of petite Treason as the rest: yet by the opinion of Bromley chiefe Iustice, and Portman (1. Mar. as Dalyson reporteth) it is not petite Treason for the sonne to kill his Father or Mother, vlesse he take meat, drinke, and apparell (or wages) of them, and do their businesse for it, as a seruant. I know, that the imprinted booke at large 21. E. 3. fol. 17. hath (*Mere*) shortly, and corruptly written, for *Meistre* which doo, and may deceiue some Reader: but Fitzher, *Corone 447.* and Statham also (which do abridge that case) haue it plainly *Meistre*, to take all doubt away from it.

But to goe forward on our way, there is none other difference betweene the offence of Murder and petite Treason, but this onely, that Murder is more generall, and may be executed against euery stranger, whereas petite Treason is restrained to these narrow bounds of priuie, that I haue set downe before you:
And

And therefore, if the wife and a straunger doe ioyne in killing, or poysoning, the hus band: or a seruant and a stranger in destroying the master or maistresse of that seruant: this is petite Treason in the wife and seruant, and Murder in the strangers. And (by the way) that wife may for the poysoning either be touched with petite Treason at the common lawe, or with Murder by the new Statute, 1.E.6. cap. 12. Dalyson. But if the wife and seruant doe conspire to kill the hus band, appointing the time and place therefore, and the seruant, doeth execute the same accordingly in the absence of the wife: then is it petite Treason in them both: whereas if it had bene done by a stranger, he should onely haue bene accessarie to it, as to a Murder. Collection Diar. fol. 332. pl. 25: & 254. pl. 103.

Now therefore (to auoyd all needlesse multiplication of particular cases) I may leaue you this one generall, and short Rule for the better understanding of all the rest of petite Treasons: namely, that whatsoeuer acte will prooue Murder betweene strangers, the same will also make petite Treason betweene these forenamed priuies. Onely I will adde this one case, which hath an extraordinarie relation in it: the seruant (being departed out of seruice) killed his late master for the malice which he had premeditated against him during

ring the time that he was his seruant: and this was taken to be petite Treason: *lib. Ass. 33. pl. 7.*

Felo de se.

For an ende of malicious killing, we are come to him that killeth himselfe: and is therefore called *Felo de se*: for the law deemeth that he doeth it *Felonice*, and with a meditate hatred against his owne life. And although this fault is neuer imputed (as I sayd) to him that is not *compos mentis*, or (as we speake) *non sana memoria, de die in diem*: yet if he haue *lucida interualla*, his death shall yeeld that forfeiture which belongeth to the fault: as *M. Stanford* gathereth by the booke, *Corone. Fitzher. 324.* And so it was accounted of him, that in a furious heate striketh another to the ground, and withall draweth his dagger to kill him, but whilest the other that lieth on the ground draweth his weapon, and holdeth it before him, he in hast to kil the other falleth vpon the weapon and is slaine himselfe. For the booke (*44. E. 3. 44.*) adiudgeth that he is *Felo de se*, and that the other shall forfeite nothing for it: But *Master Stanford* (fol. 16.) taketh it for Chaunce medley, and that he (in a maner) killed himselfe.

*Homicide, by
Chance med-
ley.*

There do yet remaine two sortes of voluntarie homicide (but without preceding malice) the one commonly called Manslaughter, but more properly homicide by Chance medley:

ley: the other *Se defendendo*, that is, in his owne defence: The former is fully named Chance medley, for that in it men are medled (or committed) together by meere chance, and vpon some vnlooked for occasion, without any former malice or euill mind in the one, to offer hurt to the person of the other. And in this offence, our law doeth remit somewhat of her severity agaynst the former fautes: so that bearing (as it were) with the infirmities of mans nature, it seemeth no lesse to allow of manhood here, then to haue abhorred malice before. But I will exemplifie it by particular cases.

If the master and his seruant fight agaynst one, towards whom the master hath malice, and telleth not his seruant thereof, and in that fight the seruant killeth the other man: how soeuer this be Murder in the master, yet is it but homicide by Chaunce medley in the seruant, *Commentar. 101.* for he could not come to execute the malice of his master whereto he was not made priny. So, if Richard and Robert fight together vpon premeditate malice, and a stranger (hauing no malice) doeth suddenly take the part of Richard; wheroby Robert is slayne: this is but Chance medley in the stranger. *Commentar. 100.*

And if two play at the bucklers together, without former malice, and the one slayeth the other,

other, this is reputed to be done by Chaunce medley, if it be not before the Queene, and by her commandement, or proclamation: and if it be, then it is not punishable at all, as Justice Fineux did hold. 11. H. 7. 23. But *M. Brooke Corone* 228. noteth, that the Iustices in the time of H. the 8. were of an other opinion.

In some case, the killing of a man may ensue upon the maintenance of an iniurious act and it shall be deemed but Manslaughter, by Chaunce medley, as thus: Robert entreth forcibly with his company into the house of Richard, and putteth out the wife, and familie of Richard: the next night after, Richard cometh with a great company weaponed to the house, to recover his possession, and setteth an out house, thereof on fire: which when one espied that was in the principall house, he shot off a gun, and therewith killed one of them that came with Richard: Nowe, upon this fact, Robert and his complices were arraigned of homicide by Chaunce medley. 23. Eliz. Report *Crompton*: for it cannot be taken to be a justifiable killing, since the other side came not to rob, or kill, but to recover the possession of that which was in a forcible Riot taken from them: Neither ought it to be construed Murder, when a man in the night season shooteth at adventure to kill him that setteth a part of his house on fire, not knowing whether it be

be any man against whom he hath former malice: and lest of all, can it be Misadventure, seeing he that shot, had a purpose to hurt, or kill withall.

More plainly is it Manslaughter by Chaunce medley, where Henry was in possession of a house diuers yeares together, and William (pretending title to that house) cometh thither with a stranger, and he shooteth an arrowe at Henry that was in the house, whereupon Henry dischargeth a crossebowe, and with an arrow thereof killeth the stranger: and so it was taken. 5. Elizab. Report Crompton. If or this was a sudden quarell for the Title to the house, without any vblawfull act preceding on either side.

If two fight upon sudden offence, and without any precedent malice, and in the fight the one runneth away, and the other goeth into the next house, and there catcheth a staffe and pursueth and killeth him which fled: this was taken to be but manslaughter by Chaunce medley, for the continuance of the firy, which was (at the first) without malice, and could not in so short time be appeased. 18. Eliz. Report Crompton.

So, if the one of them had broken his sword in that fight, and had runne home to his house (not beyng far distant) and fetched an other weapon, and had therewith killed the other:
And

And so, if two haue bozne malice mutuallly, and be reconciled together, and then afterward they meete, and the one chargeth the other with wordes of misreport, whereupon by agreement they go immediately together out of the house into the field to fight, and there the one slayeth the other : for, these and such like haue bene taken to be manslaughter on-ly : vnlesse the respite and distance of time haue bene such, that (by reasonable coniecture) the heate of the first anger might in that meane while haue bene asswaged.

Richard and Robert fight together vpon former malice, and Richard woundeth Robert, and so they depart for that time : afterward they meete vpon the sudden and fight againe, and Richard killeth Robert : this (by the opinion of Carlin chiefe Justice) seemeth to be by Chance medley : for that the former malice of Richard shall be thought to be appeased, by the hurt that he first did to Robert : and on the other side, if Robert had then killed Richard, it should be taken to be Murder, by the malice that Robert shall bee thought to beare, for the hurt that he receiued. Report Crompton. Whitherto of the principall parties to the fight, now of others that happen to haue to do therein.

If two fight by occasion of the euill wordes of a woman that is present, and the one killeth the
the

the other without any other malice : this is manslaughter by Chance medley in the woman, as well as in the slayer himselfe. *Corone. Fitz. 331.*

And if two fight vpon the sudden without former displeasure, and a stranger commeth to part them, and is slayne by the one of them : this is manslaughter by Chance medley, *Corone, Fitz. 180.* So, if two fight vpon the sudden without former malice, and the one of them breaketh his staffe : and a stander by which is not of their company lendeth his staffe vnto him, with which he killeth the other : this seemeth to bee manslaughter by Chance medley in the stander by, *Crompton.*

The last member of voluntarie Homicide, *Homicide, in his owne defence.* is where one man killeth another in his owne defence : and this is neither felonie, nor yet any iustificable killing : But euen as the law of nature (as *Cicero* in his defence of *Milo* said) doeth allow vnto man, *Omne honestam rationem expedienda salutis :* So the lawes of men do sometime reach vnto him, *Gladium ad occidendum hominem.* And therefore, our law also is a Sanctuarie for the life and lands of him that killeth another in the necessitie of his owne defence, if he cannot otherwise escape with his life from him. But he must know, that it is not all one to haue to doe with a theefe, or murtherer, and with a loiall subiect.

For

For albeit he may boldly defend himselfe, his goods, or his house agaynst a murtherer or theefe, on euen hand (as it were) and without any shrinking from him: yet, if he be assailed by an other manner of man, he must flie so farre as he may, and till he be letted by some wall, hedge, ditch, prease of people, or other impediment: that his necessitie of defence may be esteemed altogether great and ineuitable: and yet shall he be committed till the time of his triall, and shall then loose his goods, and seeke his pardon, for taking away the life of his fellow subiect. Stat. Glouc. cap. 9.

¶ *¶* Stanford (fol. 15.) describeth this manner of Manslaughter by this example. A. striketh at B. with his weapon, and B. goeth from him so far as he may for the safetie of his life, so that he cometh to a strait beyond the which he cannot flie: A. still pursueth the assault, and then B. striketh also, and killeth him, or holdeth out his weapon whereupon A. runneth, and is slayne, this (saicth he) is taken to bee done *Se defendendo*: whereas if B. had not so fled, but had striken agayne when A. stroke at him, and had thereby killed A. it had bene Felonie in him. But yet if A. had striken at B. as before, and B. had striken at him diuers blowes also (without giuing him any deadly wound) and then B. had fled to the strait, and being pursued still by A. had then killed

killed A. this would be deemed to be done by B. in his owne defence : because (saith *St. Stanford*) it is sufficient for B. that he fled to to the strait before he had giuen to A. any deadly wound : & this he gathereth by the bookes, *Lib. Ass. 43. pl. 31* : & *Corone Fitz. 284. 286. 287. 295. & 297* : And it is not materiall in the first case, though there were former malice betweene A. and B. vnlesse B. do lye in a wait for A : or doe agree with him vpon the place for fight, or do strike the first stroke at A. in al which cases, the flying of B. after ward to the strait, will not auaille, or helpe him at all.

So, if a man do assault one in his house vpon a sudden quarell, and is thereby killed, this is taken to be done by the other in his owne defence, *Corone, Fitzh. 305.* for, *ita fugias, ne preter casam*, as the Comicque sayd : and our law calleth a mans house, his castle, meaning that he may defend himselfe therein.

Having thus perused these kindes of Homicide, by
 homicide that are willingly (though not all alike wilfully) committed, and done, we must come to that which hapneth cleane besides the will, and purpose of him that doth it. And therefore, according to the law of God (which indgeth him not worthis of death that ignorantlly killeth an other, but protecteth him in the Cities of refuge) our lawe saueth vnto such an one his life & lands, but yet taketh his goods,

and giueth him a pardon of course without any speciall sute to the prince for it. So, that if a labourer do worke with an axe, and (in the fetching of his stroke) the head of the axe happen to flie off from the helue, and to kil one that standeth by: or if a man do throw a stone at a bird, or shoot an arrow at a foule, or at a marke (without euill intent) and an other man is slayne vntwares thereby: or if (in the felling of a tree) he giueth loud warning when the tree is ready to fall, and yet it falleth vpon an other man that standeth, or passeth by: Or if a Tiler throweth down the Tiles from a house that he is to amend, and giueth warning thereof, and an other man commeth vnder, and is slayne with a stroke of a tile: Or if a Scholemaster do moderately correct his scholer, and he dieth thereof. In all these, and the like cases, it is to be adiudged Manslaughter by misfortune: Stat. Marlbridge. ca. 25: 2.H. 4. 18: 11.H. 23: Corone Fitzh. 302: 354: & 398: & Commentar. 19.

But heere the distinction (taken by M. Bracton, and allowed by M. Stanford) in this case of Misadventure, is worthy the recitall. *Distinguendum est (saith he) utrum quis dederit operam rei licita, an illicita: vr, si lapidem projiciebat quis versus locum per quem homines consueuerunt transire: vel dum insequitur equum, vel bozem, & aliquis alius ab equo vel bone*

boue percussus fuerit: hic imputabitur ei. At si Magister causa disciplina discipulum verberauit: vel si quis dum fœnum de curru deponebat, vel dum arborem incidebat & adhibuit quam potuit diligentiam, scilicet, respiciendo, & proclamando, neq; id nimis tarde aut demisse, sed tempore congruo & ita clamose, vt aliorum fugere aut sibi precauere potuisset, non imputabitur ei.

Thus haue the Felonies appeared, that do kill the body: it is now time to speake of those that abuse the body without destruction of it. And here, first offereth it selfe, that Felonie which (of set purpose, and prepenesd malice) cutteth out the tongues, or putteth out the eyes of any of the Queenes subiects: 5.H.4. ca. 5: Next, the same of Buggerie that is committed with man, agaynst the order of mankind, 26.H.8.c.16: after that, the taking of any maid, widow, or wife, unlawfully against her will, that hath lands or tenements, goods or chattels, or is heire apparant to her auncellor (except it be by such as shall claime her for their Ward or bondwoman) declared to be Felonie (by the Statute 3.H.7.cap.2.) if he that tooke her, do after wards marrie, or defloure her: for so was that Statute construed, 3.& 4.Phil.& Mar.Report Dalyson: and by the same Statute, they be principall Felons that do procure or abet the felonie, or that (knowing thereof) do receiue the same woman. Then followeth

Felonies, touching the bodie, but without the death thereof.

Buggerie.

Taking away of Women.

S.ii.

the

the Felonie of the carnall and vnlawful abuse of the body of any woman (or rather a woman child) being vnder the age of ten yeares, the which, for resolution of the doubt (that *M. Diar* noteth, 14. *Eliz. Reg.*) was declared to be Felonie (by the Statute 18. *Eliz. cap. 6.*) whether she consent or no, since the lawe iudgeth her vnable to consent at her so tender age.

Rape.

And lastly, commeth the rauishing of any woman agaynst her will, where she neither consented before, nor after: and the rauishing of her by force, though she consented after: which was ordained to bee Felonie (by the Statute of *Westminster* the 2. cap. 34.) ten yeares after such time as the imprisonment of two yeares laid vpon the offender, (by *Westminster*, 1. cap. 14) was not found sufficient to repress the fault: which manner of punishment also, *M. Stanford* thinketh to haue bene rather a mitigation, then any increase of those paines, that the elder lawes did lay vpon rauishment: And whereas that Statute of *Westminster* 2. in the first branch thereof, setteth the words thus: Rauish, where she doth not assent, &c. and in the second branch thus, Rauisheth with force: I suppose that the word Force is but declaratorie in that place, and set downe to none other end but to signifie, that all rauishment is accompanied with Force:

Force: and therewith agreeth the Etymologie of the word Rauishment it selfe, which is deriued from the Latine *Rapere*, that is, to take, catch, or snatch, by Force, or violence. But here, if the partie complaining to be rauished, shall thereby conceiue a child, then Britton taketh it to be no Rape at all: because her conception prooueth her consent. So, if she were kept and vsed by the rauisher, as his concubine, *M. Bracton* (fol. 148.) thinketh that he cannot be sayd to haue rauished her: yet, if she were an harlot to an other man, the rauisher shall not be excused thereby (as it there seemeth) because she consented not to him: And howsoeuer the wicked man force her, yet can it be no Rape in him, vnesse that either he take carnall knowledge of her, or be present and aiding to another, that so forceth, and abuseth her. 11. Hen. 4. 13: & Stanford fol. 24: & 44.

Thus farre we haue dealt with the body as Felonies, touching the body and goods.
 lone: now must we ioyne the body & the house (or the goods) together, and within this measure, there fall two diuers faults, whereof the one is called Burglarie, and the other, Robberie: each of them the more hainous in the sight of law, because not only the house is invaded, or the goods sought for, but also therewithall a great terrour, & dreadfull danger is brought to the body and person by them. And, seeing that

S. iii, that

that feare is most fearfull in the time of sleepe, when we leſt thinke of it, and can worſt auoid the danger of it, let vs begin with the night theefe that committeth Burglarie.

Burglarie, and the circumſtances thereof.

Burglarie ſeemeth to take the name of Burghlar, which is deriued of Bowr (a chamber, or inner roome) and laron (a theefe) So, that Burghlarie is the theft done by entrie into a dwelling houſe. And Britton (fol. 17) deſcribeth a Burghlar (whom his printed booke calleth a Burgeſſor) to be one, that feloniously in the time of peace breaketh open Churches, or houſes, or the wals, (or gates) of Cities or Boroughs.

But, as the law is commonly taken in our time, there are foure ſpeciall things that muſt concurre to make this felonie: that is to ſay, the time, the place, the maner of the fact, and the end for which it is committed.

The time.

The time is not the time of peace alone (which is noted of the ancient writers, but only to ſhew, that (in the time of ciuile and intestine warre) ſuch breaking of a houſe agaynſt rebels is iuſtifiable enough) but in the time of peace, it muſt be in the time of night alſo. For (as M. Stanford fol. 30. truly obſerueth) the Inditements of Burglarie be alwayes of this forme, *quod noctanter fregit*: and therewithall agreeth a report of 4. E. 6. in M. Brooke *Corone* 185.

But

But in this part, it shall be good to enquire, whether all that time, which is betweene the Sunne setting and the Sunne rising, shall be accounted vnto the night for this purpose: or whether that time of light which is in the Euening, betweene the Sunne setting & night, and likewise in the Morning betweene the night and Sunne rising (whereof the one is called *Aurora*, and the other *Crepusculum*, and the beginning of the one, and end of the other, is by Ptolomee sayd to be when the Sunne is xviij. degrees vnder our Horizon) shall be taken from the night, and be added to the day. For, as the booke *Corone Fitzher.* 293. taketh the Euening that is after the setting of the Sunne, and before the departure of his light, to be a part of the day, in respect of an amercement to be layd vpon a towne for the escape of him that killed a man within that time: So, the Statute of *Winchester*, 13. E. 1. (speaking of the watch) saith, that it shall continue all the night from Sunne setting, to Sunne rising: by which words (as you see) it comprehendeth both *Auroram* and *Crepusculum* within the night.

Concerning the place, it may eyther bee The place. Publique as the Church for prayer, and the wals (or gates) of Townes, (or cities) for defence: and then you may number those acts amongst Publique felonies: or els it may be

S.iiii.

Priuate,

Private, as a dwelling house : and then it seemeth to be no Burghlarie, butlesse some person be at that time within it : because (as I sayd) the lawe in this offence beholdeth the place and the person together. But, although this offence be not committed in the very body of the dwelling house, but in a stable that is parcell thereof, and neare vnto it, yet will it be taken for Burghlarie, as *Baster Brooke, Corone*, 180. doeth write : and seeing like reason begetteth like lawe, so must it bee, if the offence bee perpetrated in a Barne of the house, or other out house that is so adjoining.

Each Colledge in the Uniuersitie, each Inne of Court and Chauncerie, and euery other like place, that is distributed for the severall lodgings of sundry particular persons, is but one entier dwelling house for this purpose. So that, if any Chamber (or lodging) there, be broken vp in the night season, for the doing of a felonie, it will worke to Burghlarie, though no man be then in it, if so be that any person bee within any other part of the whole Colledge, Inne, or such other house. But, if a man do in the night season breake into an others close, *ad ipsum interficiendum*, that is no Burghlarie, because it is not into any house, 13. H. 4. 8.

The maner.

The maner of the Burghlarie consisteth,
partly

partly in the breaking of the house, and partly in the entrie into the same. For, if a man breake the house to doe a Felonie, and enter not, it will be no Burghlarie, Stanf. fol. 30. and Collections Diar. 99. But yet, it seemeth by Shard (*Lib. Ass. 27. pl. 38.*) that he which is taken in the onely attempt of a Burghlarie shall be hanged for it, although he haue not put the thing in bre.

And of the same opinion (as Crompton reporteth) was both Sir Anth. Browne, Sir Edward Mountague, and Sir Rob. Brooke, late severall chiefe Iustices of the Common place: the first of them holding, that if one doe but make an enterpryse (by night) to enter into a house to rob there: the next, that if he shall but onely turne a key, being on the inner side of the locke of the doore: and the third, that if vpon an attempt of Burghlarie, they within the house, shall cast out their money for feare, and the attemptors take it away: that in euery of these cases, it is a full, and complete Burghlarie. He also reporteth that Iustice Portman, (3. Edw. 6.) did execute one for Burghlarie, which was taken in the night, putting backe the leafe of a window with his dagger: and the like is to bee thought of him that shall bee taken drawing the latche of a doore, that is not otherwys fastened,

But,

But, admitting that those doe amount to breaches, and entries in Law onely: and that a breaking with an actuall entrie is requisite in the case of Burghlarie: Let vs consider, what other actes shall bee taken for sufficient breakings, and entries.

If one doe breake the glasse window of a house, by night, and then with a hooke draweth out any goods: or do breake a hole in the wall of any house by night, and shooteth in thereby with a gunne or bowe, at one that is within the house, to kill him, and yet misseth him: or doe in the night season come into the house, by the help of a key, to steale any goods there: or do suddenly come into the house by night (the doore being open) whereby the owner flieth to his chamber for feare, crying for helpe, and shutteth the doore, and the offender is taken shewing at the chamber doore: in euery of these cases also, it hath bene taken to be Burghlarie. Report Crompton.

In like sort is it, if the Goodman of the house (perceiuing that Theeues are without) wil open the doores, and go out against them: and whilst he is in hand with some of them, one of their company steppeth to the doze, and stretching his hand ouer the threshold, (but not setting his foote ouer it) dischargeth a dag against one of the seruants that standeth to defend the entrie, 26. Eliz. *Idem*. And albeit the
first

first entrie into the house were lawfull, or standing with the good liking of the owner: yet by matter subsequent it may become a breach and entrie that shall amount to Burghlarie.

As, if Theeves shall come into a Towne by night with Huy and Cry, pretending that they be robbed, and shall pray the Constable to make search for the Felons: and whilest he goeth with them into some mans house to search, the theeves bind and rob both the Constable and the goodman of the house: for, in such a case, the entrie shall be deemed Felonious, euen from their first comming. But, if the case be so, that theeves doe enter into a house by night (with a mind to steale) thorow a hole in a wall that was broken before, or thorow a doze then standing open, and do then depart without doing any other harme, and be taken vpon pursuite: it is good to bee enquired, whether such a manner of entrie will make them Burghlars.

But if diuers come to do a Burghlarie, and but one of them entreteth and committeth it, the rest of them standing neere to the dooze, or about other parts of the house, or a good space off (as at a lanes end, or at some orchard gate, or field gate) to watch that no help shal come: yet is it Burghlarie in all that companie, 11. H. 4. 13. Hull.

The last of those points that must meete in Theend.
the

the making of a Burghlarie, is the ende, and intent for which the offendour commeth : which of necessitie must bee, either to kill, or rob some person, or to do some other Felonie. *Lib. Ass. 22. pl. 95.*

For if a man should breake, and enter a house, by night, of purpose onely to beate a man, that is but Trespasse: *Stanf. 30 :* but if it be to kill him, then it will bee Burghlarie, although he do not so much as touch him. *Corone Fitzherbert, 267 : & 13. H. 4. 7 :* And so is it also, if the purpose be to rob, although he taketh away nothing at all with him, *Corone Fitzher. 185 : & 264. lib. Ass. 22. pl. 39.* But if the intent were to perpetrate a Rape (which was not Felonie, at the common law, as some haue thought) then is there some doubt and question made vpon it.

Robbing in a
house, booth,
or tent.

Thus much of Burghlarie : whereunto those offences be very neare, that are set forth by the Statutes, 23. Hen. 8. cap. 1 : & 5. E. 6. cap. 9 : to this effect following, viz. If any person shall robbe an other in any part of his dwelling house, or place (the owner, or dweller, his wife, child, or seruants being within the same, or within any place within the precinct of the same, and being either sleeping, or waking) or shall rob any person in any Tent, or Booth, in any faire, or market (the owner, his wife, children, or seruants, or seruant, being

ing

ing within the same, sleeping, or waking, he shall be a Felon. Betweene the which offences, and Burghlarie, the difference standeth thus: If first, that these may be done by day, whereas Burghlarie is by night onely: and then, that in these there must be a Robberie, or taking away of some thing, whereas in Burghlarie the offence may bee perfourmed, though the offender take nothing away with him. And (by the report of M. Dalyson) these Statutes shall be straightly construed, (in favour of life) and according to the bare letter: so that, if the robberie be done by day, & there be in the house but one seruant onely: or there be in the house, booth, or tent, but a stranger, or sojourner only: the fact shall not be adiudged an offence against these Statutes.

There is yet also one other Felonie concerning houses: For M. Bracton saith, that if one do burne a dwelling house maliciously, he shall die the death for it: and Britton fol. 16. describeth the manner, writing that he shall be burned for it: besides the which, *Westm. 1. ca. 15.* forbiddeth the Repleuin (or bailment) of such an offender. And the burning of a house Felonice (saith M. Brian 3. H. 7. 10) was Felonie at the Common law.

So is it, to burne a barne (in the night) that is adioyning to a dwelling house: 11. H. 7. 1. Cur: or to burne a barne (in the day) that hath

Burning of
houses.

hath any corne (or graine) in it, although it do not so adioyne.

Now, if the wicked purpose of a man be, to burne the house of A. onely, and yet by that fire the house of B. is burned also: then is the burning of this last house Felonie, because it followed of the fire that was maliciously kindled to burne the first. *Commentar. 475.*

Robberie.

But, to leaue the house, and to come to the goods that do accompany the person, we must bewray the violent Robber, so called, either by corruption of the Latine *Raptor*, frō which our tongue will easily fall to robber: or else of Robe, because he that after this forcible and fearefull maner, spoyled an other, did vse to take his robes (or clothes) from him. And in this kind of Felonie, the law regardeth not so much the value of the thing robbed, as the feare that the Robber bringeth with him to the person of him that is inuaded. So that if he take any thing at all, it will bee Robberie, though it be not woorth so much as one peny: *Corone Fitzh. 115: & 178. & lib. Ass. 22. pl. 39.* And hereof *H. Bracton*, and *Iustinian* do terme this offender, *Furē improbum, & praedonem, qui rem alienā rapit.* So, that Robberie, is the felonious (or theeuish) taking of any mans goods frō his person, to his feare & against his will, to the end to steale the. And in this description, the word (taking) is largely extended

extended against the offender: in so much that it may prooue Robberie, though the owner may (in some case) rather seeme to haue deliuered the goods, then the theefe to haue taken the same from him: if it proceed and bee done by feare and menacing.

And therefore, if the theefe do assault a true man, and threaten him, that (if he will not deliuer his purse) he will kill him, by meanes wherof he deliuereth his purse vnto him with his owne hands: yet this is plaine Robberie, because he doeth it for the feare wherewith the theefe hath stricken him: Stanf. 27.

So, if the theefe do (without any expresse words of threatening) onely assault a true man for his purse, who (fighting with him, and finding himselfe too weake) throweth downe his purse, and the theefe taketh it, 20. Eliz. Report Crompton.

So, if theeves take a man, and compel him (by manace of killing) to sweare vpon a booke to bring vnto them a certaine summe of money, or other goods: and thereupon he goeth, and bringeth the same vnto the: this is adiudged Robberie: 44. E. 3. 14. and yet hee was once at libertie, and out of their hands, so as he might seeme to bee freed of all the feare wherein he stood by them. But yet who seeth not, that the same feare that made him to take the oath, did still follow him euen to the performance

mance of that which hee had s'worne and promised.

And so is it, if theeves assault mee for my purse, and I (in the flight from them) cast it downe into a bush, vpon hope to haue it againe if I may escape them, and they espie it, and take it away with them: for, had they not put mee in feare, I would not so lightly haue throwen my purse with money from me. Neither is the word person so nicely to be construed in this description, that (to make vp Robberie) the goods must needes bee annexed (or fastened) to the person. For M. Stanford (fol. 27.) reckoneth it to be Robberie, if one shall take my goods openly against my wil, in any place wherin I am present, though the goods be not vpon my person at all: which seemeth to be good reason, seeing that in both cases, the losse is the same, and the feare is alike.

But now we withall, something must be taken from the person: or else the fact will proue no Robberie: for, if a man do lie in a waite to rob me, and (drawing his sword vpon me) he willet me to deliuer my money: and I likewise betake mee to my weapon, and thereby repell him, and take him, either by fight, or by Huy and Cry made after him: this will not be Felonie at this day, saith M. Stanford, agreeing in opinion with Ienney, 9.E.4. 26: because he tooke nothing from me, and yet in the

the old time (when the will and the act were of like account in Felonie) it was otherwise holden, as may appeare, *lib. Ass. 27. pl. 38. & 25. E. 3. 42.*

Againe, a man may take some thing from the person of another without title to it, and by force, and to his feare, and yet it may be doubted, whether the act will amount to Robberie: as for example, it happened, *26. Eliz.* that one came to a Fisherman that trauelled by the high way with fish to sell: and prayed to haue fish of him for money: the Fisherman refused to sell vnto him: and he (with force and feare) tooke some of the fish, and gaue him money to the value (and aboue) for it: and of this case the Iustices of the Session thought good to be aduised. Report Crompton.

For an end of Robberie: two theeuers attempted to rob a true man, who fled fro them, the one of the theeuers followed him in chase, and the other espying an other true man in the same high way (but out of the sight of his fellow theefe) rid towards him, and robbed him: and then, returned to his fellow, from whom the first true man had in the meane while escaped: this was adiudged Robberie in both the theeuers. Report Crompton: and yet the one of them was neither within the sight of that Robberie, nor assented to it: But because they both came to rob, and (at the same time)

C. i.

this

this fact was committed by the one, it is w^orthily to be imputed to the other also.

Cutpurse.

Amid betweene the violent Robber that taketh from the person by force, and the mitching theefe that stealeth whē the person (or the owner) is absent, standeth the crafty cutpurse, or pickpurse, that taketh goods (or mony) from the person by sleight onely, the owner neither being made afraid, nor witting of it. This fact as it is no robberie, because it is void of assault, force, & feare: So, neither is it any Felonie unto death, vntlesse the thing taken be of more value then xii. d. in mony. *Collect. Diar.* fol. 224: And in this kind of offence, it is thought necessary, that the theefe haue an actuall possession of the thing, seuered from the person of him from whom it is taken. So that, if the offender cut a mans girdle at which his purse hangeth, & the purse falleth to the ground, & he be descried before he take any hold of it: this will not make Felonie: But if he take the purse in his hand, and then cut the girdle, & afterward let them fall, that wil proue him a Felon, because he had a manuell possession of the purse remoued from the person. *Crompt.* And nowe, I am (by the course of mine owne order, & diuision) drawen from the body, and diuē to take in hand that Felonie that worketh vpon the goods alone.

Larcenie.

This doth M. Stanford call Larcenie: a name fetched from the Latine *Latrocinium*, which

which language would as soon haue knowen it to be her owne, if we had called it *Latrocinie*, but she must be contented to beare with our custome of clipping whatsoeuer we do borrow from her. *M.* Bracton calleth it *furtum*, and Varro said, that *fur* was deriued *à furo*, (that is darke) because theues do willingly worke by night, as hating the light of the sunne that may betray thē. But Gellius noteth him of error, and thinketh *ḡ fur* came of the olde Greeke word *ῥῆψ*, which signified a thiefe (or stealer) so named (as Iustinian writeth) of the word *fero*, which is both Greeke & Latine, and signifieth to cary, or beare away: which is the very end for which the theefe commeth.

M. Bracton defineth it thus: *Furtum est contrahatio rei alienae fraudulenta, animo furandi, inuito domino*: which definition is tollerable, although *M.* Stanford do not like it. For, Bracton meant thereby to describe all maner of theft, whether it were robberie it self, or great or petite Larcenie, euē as the Ciuilians do vse to teach. But, because I haue taken another way in Felonies, I will (for mine owne purpose sake) describe, Larcenie, to be a felonious & fraudulent taking of another mā's personal goods (remooued frō his body or person) without his will, to the end to steale thē.

And, albeit petite Larcenie be not punished by death (as the greater Larcenie is) *Petit Larcenie.*

be they both Felonious & fraudulent takings, &c. for the enditement of petite Larcenie (saith Iudge Fitzh. 27. H. 8. 22) must be *Felonice cepit*, and he shall forfeit his goods for such a Felonie. So that there is no difference either in the nature of the offence, or in the mind of the offendor, but onely in the value of the thing that is taken, which also maketh the degrees of the punishment.

And therefore, if it be found by the Iurie to exceed xii. d. in value, he shall die for the fault: and (if it be of, or vnder that worth) he shall be corrected by the discretion of the Iustices that may heare and determine it: *West. 1. cap. 15*: Britton fol. 21: *Corone Fitz. 404: & 406*. But here on the one side, if a man commit diuers petite Larcenies, which (in all) doe exceed the value of xii. d. then may they be put together into one Enditement, and hee shall suffer the paines of death therefore. *Corone Fitz. 415*: and on the other side, if two or more persons, do ioyne in the stealing of goods that do surmount xii. d. they all must die for the fault, *ibidem 404*: and yet (as saith M. Stanford) that felonie is seuerall in lawe, euen as those others were seuered in act, and deed.

Of what
things Larce-
nie may be.

But for the more cleare vnderstanding of Larcenies, I will first shew of what things Larcenie may be committed: and then, after what maner, and with what mind, the same may

may bee performed: for, as touching the persons that may be charged with that fault, they wil be shortly comprehended.

It is Felonie therefore, to steale any the moouable goods of any person: but because it may in some cases be doubted, whether the things so taken are to bee numbred amongst moouable goods, or no, I will proceed in particularitie.

Honey, plate, apparell, household stufte, Corne of any sort (or haie, or fruit) that is seuered from the ground, hoxses, mares, coltes, oxen, kine, sheepe, lambes, swine, pigs, hens, geese, ducks, peacocks, turkies, & other beasts, and birds of domesticall (or tame) nature, are such, as felonie may be committed in the taking of them. It may be Felonie also, to take some that be of a wild nature: as to take yong pigeons, or yong hawkes out of their nests (or airies) before that they can flie. So, to take fishes that be kept in a trunke, stewe or pond, 10.E.4.15: 18.E.4.8: *lib.* Ass.22. pl.98. & 18.H.8.2. For, as a man hath a propertie in those first things that be domesticall, and therefore it is plainly theft to take them: So in these latter, he hath such a possession of them, that the one sort for weakenesse, and the other for the restraint, cannot (without helpe) vse their nature, and forsake him: and therefore it is like iniurie to steale them. But other wise it

is of doves, or hawkes, that can flie at libertie: and of fishes that live abroade in rivers, or streames: because they are *nullius in bonis*, and therefore *occupanti conceduntur*. And yet, by Statute law there is one exception: For, if a man finde a Falcon, Carcelet, Lanoz, Laneret, or other Falcon that was lost, and doe not forthwith bring it to the Shirife to be proclaimed, but doe steale, and carry away the same, it is declared to be Felonie: 34. E. 3. cap. 22: & 37. E. 3. cap. 19. But, to go forward: To take Pheasants, Partriches, Hares, Conies, Herons, Swans, or Deere, that are abroad: or to take dogs of any kind, apes, parats, singing birds, or such like, (though they be in the house) is no Felonie: because these latter be but for pleasure only, & are not of any value, and those former be of a wild nature, as those are whereof I spake before, 18. H. 8. 2. And therefore, Justice Hales (7. E. 6.) thought it no felonie, to take a diamond, rubie, or other such stone (not set in gold, or otherwise) because they be not of price with all men, howsoever some men do hold them both deare and precious.

And heere againe, is some exception: for, to take a tame deere is Felonie, if at the least the taker know it to be tame, 10. Ed. 4. 15: & Stat. 25. And the Statute 1. H. 7. ca. 7. maketh it Felonie to hunt deere, or conies (after some sort)

foze) in a forrest, parke, or warreine.

Furthermore, to take the flesh of any tame, or wild foule or beast (that is dead) out of the possession of another man, is felonie: Stanf. 25. So, to take the wooll from the sheepes backe, or to take the skin, and leaue the body behind, will be Felonie, Report Dalyson.

And now, you must remember, that in the description I said, of another mans personall goods: for, to take chattels reals, will not amount to Felonie: As to take the charters of a mans land, in or without a boze, or to take an Infant in warde, can be no Felonie: because they be reall, and not personall chattels, 10. E. 4. 15: And yet the Statute (5. Eliz. cap. 14.) toucheth them in Felonie, that shall secondly offend in forging deeds concerning an other mans land, &c. by which they endeouour to steale (as it were) his inheritance from him. Again, to steale fruit that hangeth on the tree, or to cut down: and cary away the tree it selfe, or to take the lead from a house, or church, wil not worke to any felonie: because these things be part of the freehold, till they be seuered, and cannot therefore bee reputed for any chattels, Corone Fitzherbert 119: & 256. & Report Crompton: but if I gather mine apples, or cut downe a tree of mine owne: then may an other become a felon by the taking of either of them, Stanf. 25.

And (by the opinion of M. Marrow) if a man cut downe a tree of mine this day without tittle, and fetch it away to morow, that will prooue him a Felon, because it was a chattell seuered when he tooke it.

Moreouer, to take treasure that was hidden, or goods or cattel that be waiaued, or wrecked, or straided, is no Felonie: *Corone Fitzher.* 187: & 265: & *Stanf.* 25: because it doeth not yet appeare who is the owner of them, and the words of the description be an other mans goods: And it is not like, as where the goods may be sayd to be, *Bona capella, bona parochianorum, bona cuiusdam mortui ignoti, or bona domus, aut ecclesia* in the time of vacation: for in all these cases, there be *domini*, or owners of them to some purpose. *Enditement, Fitz.* 15: yea, if a man do baile (or lend) his goods to an other, and do afterward feloniously take the agayne, this shall charge him selfe in Felonie: for, albeit he were owner of them, yet had the other them in a speciall propertie also, by which he might haue an appeale or action of Trespasse, against a stranger that should steale, or take them: 7. H. 6. 43. And agreeably to this, the Ciuilians doe adiudge it theft, if one (that laieth his goods to pledge) do embe sell them from the partie to whom they were engaged.

So, (by the opinion of Marrow) if I lend my

my plate to one that melteth it, and I take that mettall feloniously, it is felonie in me, because the proprietie is altered by altering of the fashion.

Thus farre of the things that are subiect to this Felonie. Now, let vs see what maner of act and demeanour is requisit to make the fault full. Two things must concurre, namely, to take: and to cary away (or remooue) the thing taken, with a purpose to steale the same. For the Enditement must alwayes be *cepit*, & *asportauit*, or *cepit*, & *abduxit*. And in eyther of these two, the letter and word is not so much to be regarded, as the meaning and sense thereof, for the more seuer, and assured suppression of offenders. For, as it is clearely Felonie, if a man take my goods (with a minde to steale them) without any deliuerie by me: So may it ppoone Felonie also, though he come first vnto them by deliuerie from mine owne hand.

And therefore, if a Tauerneer deliuer a goblet to one to drinke his wine, and he caried the goblet away, it is Felonie, because the Tauerneer gaue him no possession thereof, but the vse for the time onely, 13. E. 4. 10. So, if I deliuer to a man certaine bales of Dade, or a tunne of wine, to cary to *Canterbury*, giuing him money for the cariage thereof, and he carieth them to *Yorke*, and there breaketh vp the bales of tunne, and conuerteth part of the Dade

In what maner, Larcenie is committed.

or wine to his owne vse, it is Felonie in him, *ibidem*.

But if I deliuer my goods to a man to keepe, and he fraudulently consumeth them, or otherwise conuerteth them to his owne profit, it is no felonie, *ibidem*: for, that booke agreeth, that if the other had conuerted all the Wine, or all the Dade (as he receiued them) to his owne vse, it had bene no Felonie by reason of the deliuerie: but heere it may be truely sayd vnto him, that neither the Dade nor wine were deliuered to him in that plight whereto himselfe hath brought them, and so (vpon the matter) he had no deliuary of them, but a bargaine to cary them.

And if any Cooke, Butler, or hourse-keeper, shall goe away with any of my vessell, plate, or horses, which they haue in their keeping, it is Felonie, because they haue no deliuerie: insomuch, that whilest those things were in their hands within my house, the possession of them is continually remainyng in my selfe, and not in them: But (3. H. 7. 12.) there is some strong opinion agaynst it. If I deliuer my goods to one to carie to a place in London, and he carieth them accordingly, and then conueieth them away, and selleth them, it will be Felonie, because the prinitie of the deliuerie was determined so soone as he came to the place. Stanford 25. and then he hath no more

more a deliuerie, then if I should giue to one the key of my chamber, & he would therewith open the doore, and take the goods that are therein from me, Stan. 25.

A man may gather by Glanuille, that the ancient law gaue no iudgement of Felonie against him that came to the possession of the goods by the hand of the owner: for he saith (*Lib. 10. cap. 13.*) *Furtum non est, ubi initium habet sua detentionis per dominum rei*: and thereupon grew those differences of opinions concerning goods in the charge of seruants: for the appealing whereof (in some part) the Statutes (21. Hen. 8. cap. 7: & 5. Eliz. cap. 10.) doe declare it to be Felonie, if any seruant of the age of eightene yeeres (other then an Apprentice, which also is to be vnderstood of him that is bound by Indenture, by the name of an Apprentice) shall go away with, or conuert to his owne vse, any mony, iewels, goods, or cattels of his masters, or maistresses, & of his or her deliuey to keepe, of the value of xl.s. to the intent to steale the same. But, euen as to labour to take away all doubt in law, is nothing els, but *Hydra caput amputare*: So, within fortie yeares after this Statute (which was made for the resolution and clearing of those former doubts) sundry questions did grow vpon the construction of this lawe it selfe: First, if a man deliuered
an

an Obligation to his seruant to keepe, and he tooke vp the mony due thereby, & went away with it: and then, if a man deliuer to his seruant wares to be sold, at a faire, (or Market) and he selleth them there, and goeth away with the money: whether these offences bee within that Statute, 21.H.8. And it seemeth by the better opinion, that they are not: for in the first case the money was not deliuered, but the Obligation: and then the seruant stole not that which was deliuered, but an other thing, and that also a thing in action only, and so of no value at all. And in the latter question, the first part of the former reason holdeth also. Howbeit, if the seruant receiued xx.li. in gold, which he changed into siluer money, and then ran away with that, his fault wil rise to Felonie, because, that gold and siluer were both but money, though diuers mettals. *Collect. Diar*, fol. 5: & Report Crompton. 27. Eliz. And it seemeth by *Diar* there, that if one seruant do deliuer to his fellow seruant, the goods of their M. to keepe, and he goeth away with them, this shal be Felonie within the meaning of that Statute, because it shall be sayd to be the deliuerie of the M. himselfe.

An other felonie there is also declared by the Statute (33.H.6.c.1.) against the household seruants, that doe take and spoile the goods of their deceased maister: But that Felonie

lonie groweth vpon their default of apparance in the Kings Bench, after proclamation, and therefore our Iustice of the Peace can not well take knowledge of it.

The other point, that (as I sayd) must con-
curre to make vp this Felonie, is the carying
away, or remotion of the thing that was felo-
niously taken. In which part also, it is not of
necessitie, that it be cleane caried out of the
place where it was, but it sufficeth that it be so
farre remooued, or stirred, that the euill mind
of the taker may plainly appeare. As, if a
guest will take the sheetes out of the chamber
where he lodgeth, and then goe towards the
stable for his horse, with a mind to steale the
sheetes, and is taken with them, this maketh
his Felonie full, although he hath not caried
them quite out of the house. *Lib. Ass. 27. pl. 39:*
And like law is it, if a man do take a horse in
another mans close with felonious intent, and
bee deprehended in the fault before that he
haue led him out of the same close. Report
Dalyson.

Touching the persons that may bee char-
ged with Larcenie, they shall best appeare by
a Negation: or handling of those which can
not be charged with it. And for that purpose,
if the husband, and the wife, do commit a Lar-
cenie together, it shall be imputed to the hus-
band onely. *Corone Fitzh. 160.* Neither is the
charge.

What persons
are charge-
able in Lar-
cenie.

chargeable, if the husband compell her to commit the Larcenie alone: *Lib. Ass. 27. pla. 40.* But if she do it by his onely commandement, without other constraint, then *M. Bracton* affirmeth it to be Felonie in her, and *M. Stanford* doubteth of it.

And the wife shal not be accounted a Felon for stealing the goods of her owne husband: yea, although another (that knoweth it) take them of her, yet is he no Felon for it: *Corone, Fitz. 455*: & *Stanford 27*: But a wife may become a Felon by her owne act, the husband not knowing thereof: as if she steale another mans goods, or receiue the theefe that stealeth them: and in such case if the husband know not thereof, or (knowing it) do forthwith forsake his house, and her company, he shall not be charged for her offence, *Corone Fitzh. 383*. The Infant, the furious man, the lunatique, and the dumbe, and deafe person, are chargeable in Larcenie, after the same sort, as they be charged in Homicide before.

Accessories
to Felons, by
the common
law.

The principall Felons of all sortes beyng thus perused, we are now to consider of their Accessories: for they be Felons also. It may plainly be collected by *M. Bracton*, and by the Statute of *Westm. 1. cap. 15.* that in ancient time the Lawe tooke knowledge of three sortes of Accessories: some before the Felonie done, as commaunders thereof: others at the
very

very time of the Felonie, as those that (being present) gaue force or aide thereunto: and others after the Felonie committed, as those which receiued or comforted Felons knowing of the offences that they had made. And *99. Stanford* (fol. 71.) saith, that all Abbet-tors, consenters, and procurors, be taken to be within the reach and measure of accessaries before the offence committed. But, forasmuch as it is euident by many bookes, (and namely by 7.H.4.27: 11.H.4.13: 10.E.4.14: 21.E.4.71: & *Cordue Fitz.* 309: 314: 350: 433: and others) that the law is otherwise taken at this day touching them of the second sort, that be of societie with the principall, and bee also present with him at the doing of the Felonie, (whether it be Murder, Robberie, Burghlarie, or Larcenie) insomuch, as it adiudgeth them principals no lesse then him that doth actually perpetrate & worke the offence (as it may sufficiently appeare by that which is sayd before) I am eased of the labor to deale with the, and shal not need to handle any other sorts of accessaries, but those onely, that be either before, or after the time of the felony done & committed.

And here (at the first) I am fallen vpon a two-fold question: the one whether there may be any Accessories to such Felonies as were not at the common law, but were afterwards created by statutes, vnlesse the same statutes
Accessaries
by Statutes.
 do

do specially so appoint it: and if there may be such accessaries before the offence, yet then whether there may be any Accessaries to such a Felonie after the offence also.

And, albeit the first of these questions might haue receiued the more easie resolution: for that all such as do will or procure any Felonie to be done, are the very first cause thereof, so as without them it is to bee thought that it should not haue bene committed: yet they of the Parliament house haue (in the making of sundry new Felonies) thought it conuenient for the auoiding of all doubt, to comprehend in plaine speach the Accessaries, both before and after. For so you may see it done, by the seuerall Statutes, 1. Mar. cap. 12. made agaynst Rebellious Assemblies: 1. & 2. Phil. & Mar. cap. 4. against Egyptians: and so of such others.

And this caused M. Stanford (fol. 44.) to write, that there could be none accessaries (after the offence) to the Felonie of embezelling Records, declared by 8. H. 6. cap. 12: nor to the Felonie of coniuration, set forth by the Statute 33. Hen. 8. cap. 8: because those two Statutes haue none expresse mention, but only of the Accessaries before the offence committed: And that there could be none Accessarie at all, to the Felonie of taking of maidens, widowes or wiuers, against their wils (enacted

ted 3. H. 7. cap. 2.) because thereby, the procurors, abbetors and receivers are adiudged to be principall Felons.

But, for a more certaine rule in all these points, I will vse this one case, that happened in the Kings Bench (3. & 4. Phil. & Mar :) as Judge Dalyson reporteth it.

Two men (saith he) were endited vpon that Statute (3. H. 7. cap. 2.) for the taking of a woman against her will feloniously: and two other men were then also endited, for that (knowing the Felonie) they did receiue, and comfort the first sayd offenders. In this case, albeit the Statute doth make as well the procurors, and abbetors of the Felonie, as also the receivers of the womā (knowing the matter) to be principall Felons: and thereby these two persons, which receiued the Felons only, (and not the woman) can be deemed no principals: yet, all the Judges of that Court were then of the opinion, that these receivers be accessaries to this Felonie by the Statute, no lesse then if it were to a Felony at the common law. For, when a Statute (say they) maketh a Felonie, it is a Felonie, and hath accessaries to it, euen in the same maner as if it had bene Felonie at the common lawe. As in a Rape, which is declared by the Statute (W. 2. cap. 34.) saying, If a man rauish any woman, where she assented not before, nor after, let

V. j.

him

him haue iudgement of life, and member: yet, if another (knowing of the fact) shall re-
 ceiue the rauisher, he shall be an accessarie, no
 lesse then if it were to a Felonie that had bene
 by the common law.

Accessories,
 before the
 offence was
 done.

The ground of Accessories being thus le-
 uelled by the line of this iudgement, I will
 walke euently thorow it, and handle (vnder
 one) both the accessaries before, and after, as
 well by the common law, as by the Statutes.
 Such therefore as shal either will, command,
 hire, procure, conspire, consent, or abette, any
 Murder, Rape, Robberie, Burghlarie, or Lar-
 cenie to be done, and be not present at the do-
 ing thereof, are accessaries before the Felonie
 done, and thereby Felons when the Felonie is
 done. And albeit, that the chiefe offendor do not
 accomplish the fault altogether in the selfe
 same sort, as it was before hand agreed, and
 plotted betweene him, and the accessories: yet,
 if any felonie fall out by that attempt, either
 against the same person, or against any other,
 then those that were so priuie thereunto shall
 be taken for accessaries vnto it. As if A. wil-
 leth B. to beat or to rob C. and he attempteth
 it, and thereby so beateth him that he dieth
 thereof, now is A. an accessarie to this Mur-
 der. *Corone Fitzh. 314: & Commentar. 475.*

So, if a man command one to set fire on the
 house of A. and he so doth, and by kindling the
 same

same fire the house of B. is wasted also : this commander is accessarie to the burning of the house of B. though he neuer meant that the fire should go any further then to the house of A. onely, *ibidem*. If or, in either case, the latter euill was but a sequele of the former, which was commaunded by him, and attempted by the other.

Againe, if a man hire one to poison another, and he killeth him with a sword, or contrarywise killeth him with a sword when hee was willed to slay him by poison : he is an accessarie to the murder : Dalyson.

So also, if one procure a man to kill another in the field, and he killeth him in a house, or church : or to kill him such a day or at such an houre, and he killeth him at another day or houre. If or, their wicked purpose is effected as they agreed, though by an other meane (or circumstance) then was set downe betweene them. *Comment. 475.*

But if I commaund one to take A. and he taketh and robbeth him, I am no accessarie to his offence : *Stanf. 41.* So, if one doe conspire with an other, that the one of them shall burne the house of A : and he burneth the house of B. or that he shal steale the horse of A. and he stealeth his ore : or that he shall rob A. in the high way, and he robbeth him Burghlarlie in the night season within his house : Now is that

U.ii,

other

other none accessarie to any of these Felonies, for that they be either in other things, or of other kindes, then were intended. *Comment.* 475. And (which is more strange) if the husband conspire with another to poison the wife, and he for that end procureth, and bringeth poison to the husband, who tempereth it with an apple, and giueth it to his wife to eate, and she (thinking none euill) deliuereth a morzell thereof to her daughter there present, who also eateth it, and dieth of the poison: yet is that other person none Accessarie to this murder that the husband hath committed: because it is a distinct thing from that which he purposed: and (against him that is not the immediate murderer) the sequele of the fact shall not bee drawē to charge him beyond that which was intended by him. *Comment.* 476.

But now, in all these, and the like, cases of Accessaries before the fault, it is of necessitie that the commaunder, hirer, procurer, or conspirer, continue his mind, and purpose, euen till the Felonie be fully done and executed. And in this respect, though it be no felonie (as I said) to strike a woman with child, whereof the child dieth after that it is bozne: Yet if a man shall maliciously procure a woman that goeth with child to destroy that child so soone as she shall be thereof deliuered, and she thereupon doeth it: Now is he an accessorie to this Murder:

Murder : because that procurement before the birth, continueth untill it be executed by the Murder which followeth the birth. Collecti-
on Diar. 186. But other wise, if he shal repent him of his malicious mind, and thereof giue notice to the other, and withall charge him that he make no such attempt, and he doth neuerthelesse bring the same to effect, then is such commander or procurer no more Accessarie to the fault, then if he had neuer imagined, or thought vpon it. *Comment.* 476. Neither do I thinke, if a man foreknow of a Felonie (entended to be done) and do conceale it, and thereby suffer it to passe on to effect, that he can be made an Accessarie thereby: vnlesse he haue also vttered some expresse consent, or giuen assured signe of his owne allowance, and liking of the same: but rather, that such his concealment wil weigh to a misprision (or contempt) for which he shal be fined: euen as if it happened him to be present at the doing of a Felonie (whereof he neither had knowledge, nor came therefore, nor gaue aide thereunto) and would neither disturbe the Felon, nor le-
uie Huy and Cry after him. *Stanf. fol. 40. & Corone Fitz. 395.*

Accessaries after the Felonie, be those, Accessories which (knowing of the Felonie) do felonious- after the of-
ly, or with an euill mind, receiue, harbour, fa- fence.
uour, or otherwise comfort, the Felon, whether

it be in the same countie in which the Felonie was done, or in any other. If or if a man shall onely make sute by his word, (or writing) in the behalfe, and for the deliuerance of one whom he knoweth to be a Felon, this is done of fauour, but yet not with such an euil intent, as that it shall make him an Accessarie thereby: *Lib. Ass. 26. plac. 47.* But if a man do (vpon Huy and Cry) arrest a theefe that hath stolen the goods of an other, and do then (with an euill mind) take the goods, and so let the Felon go, he is to be arraigned for it, as an accessarie to the Felonie, if not as a principall Felon: for so is the doubt mooued, *Lib. Ass. 27. plac. 62.*

Againe, if a man pursue, and take a Felon that hath stolen his goods, and then taketh his goods, and suffereth the theefe to goe at large, he is no Accessarie thereby: for he may *agere ciuilitur*, or *criminaliter*, at his owne pleasure, as *H. Bracton* writeth: but if he take money of the theefe, to the end that he shall not giue euidence against him, whereby the theefe escapeth, then is he become an Accessarie to the felonie of his owne goods, by the opinion of *Judge Hales* (6.E.6.) because it is done with a mind to comfort the Felon in his euill doing. *Report Dalyson.* To receiue, harbour, or relieue with money, a man that is bailed for Felonie, and bound to appeare for his

his triall, breedeth no danger of being an Accessarie, because the law doth him that fauour, and the Felonie cannot bee concealed by it: Neither will it make a man accessarie, to receiue (or buy) the goods that he knoweth to be stollen, vntil he do receiue the theefe that stole them: 9.H.4.1.& *Corone Fitzh.* 126: & 208. And although the preamble of the Statute (2.& 3.E.6.cap.24.) seemeth to call him an Accessarie, that receiueth the goods onely: yet that must be vnderstood of him that receiueth the goods, and the Felon together. For it was not the purpose of that Statute (as I thinke) to make any new Accessarie that was not before, but onely to prouide triall (where it wanted) for those Accessaries that were before.

Furthermore, as one man may be Accessarie to a principall Felon, So may another man be Accessarie to that accessarie also. For if one do feloniously receiue, or comfort him that is an Accessarie, he is fallen into equall danger with him, and is called an Accessarie to an Accessarie. *Lib. Ass.* 26. pla. 51: *Corone Fitzh.* 196.

Againe, in the iudgement of an accessarie, nature is not allowed her excuse: for, (*Corone Fitz.* 427.) a felon fled to the house of his brother, who shut the foredoore against them that pursued the felon, and conueied him out of the

house by a backe doore, whereby he got to the Church: and this brother was adiudged an accessarie for it. But yet, such consideration hath the lawe of the dutie of the wife towards her husbando, that she shall not be deemed an Accessarie, though (knowing him to haue committed a felonie) she doeth both receiue, and comfort him, and also couer the fault that he hath done: *Corone Fitz. 383*. And in all cases of an after accessarie, this one thing is generall, and requisite, that the fact (to which he is an accessarie) be a felonie at the very time in which he becommeth an Accessarie to it. If or, if a man do giue a mortall wound to another vpon the first day of August, and a third person (knowing thereof) receiue him, two or three daies together, and letteth him goe, and then after ward he that was stricken dieth of the wound within the yeare and day: yet this receipt maketh the other none accessarie, because the principall fact was then no felonie. Report Dalylon.

One person,
charged as
principal, and
Accessorie.

And if a man haue bene charged as a principall felon, and vpon triall be acquitted thereof, yet may he (if the speciall matter will so serue) bee an accessarie thereto after the offence, though not an accessarie before. *Corone Fitzher. 200: & 463*: If or (as M. Bracton saith) those offences which make an accessarie before, be so fast tied, and knit to the principall

paſſ fact (whereof they bee very cauſes) that they cannot be ſeuered from it: Whereas thoſe others (which make an Accessarie after) doe follow the fact alſo, which alſo is complete without them.

And to this opinion, M. Stanford enclineth fol. 105: But, as he confeſſeth that the lawe was otherwiſe taken in ancient time, and that the partie might be charged as an Accessarie before the offence alſo, as it may appeare *Corone Fitzh. 424*: So I find, that the late opinion of all the Juſtices (1. & 2. Phil. & Maria) was agreeable to the ſame: becauſe the principal fact is one offence, and the accessarie fact (whether before or after) is another offence, and diſtinct from it: inſomuch that although a pardon of all felonies, will not diſcharge a murder, yet it is auailable for all the Accessaries thereto, be they Accessaries before or after, Report Dalyſon.

Now, as all that which is hitherto ſpoken, is meant of Accessaries to Felons, that be not attainted: So, is the ſame much more to be holden, concerning accessaries to Felons that be attainted, and of record. If or, to receiue an approouer (knowing him ſo to be) will make a man accessarie to the Felonie that hee hath confeſſed: and of like daunger it is, wittingly to receiue him that is attainted of Felonie, by way of belawie. *Corone Fitzh. 285*. And in this

this latter case, there is some opinion, that a man shall be an Accessarie for receiuing a Felon attainted (especially in the same countie) though he know not of the attainder at all. *Corone Fitz. 377. & Collect. Diar. 355* : for euery man (say they) is bound to take knowledge of a matter of Record, at the least in the same, (though not in a forreine) countie: but *M. Bracton* very reasonably requireth a right and direct knowledge in the partie, to make him Accessarie, as well in the one case as in the other: for, albeit a record (and especially the promunciation of an vclawrie) be so notorious, that euery man may easilie come to know the same: yet, were it an ouer great extremitie, that each man should (vpon the perill of his owne life) enforme himselfe, and take vnderstanding of it.

I haue nowe (as you see) gone ouer this large field of principals, and Accessaries, in all these sundry sortes of Felonies: so much the more slowly in pace, as I haue laboured to cary the Reader in companie with mee, and that also the rather, because it is a point of great waight, frequent in vse, and fit for euery Iustice of the Peace to heare, and vnderstand.

What things
some one Iu-
stice may do.

Nowe am I to prosecute by way of short note, the power of some one Iustice of the Peace, and so to conclude this second booke.

The

The Register booke of the poore is to re- Poore peo-
maine with one of the Iustices of the Peace of ple.
that diuision. And either of those two Iustices
of Peace, before whome the Collectours for
the poore are appointed to make their ac-
count, may commit him (that shall refuse or
neglect to make his account, by the space of
fourteene dayes after request to him thereof
made) to the next Gaole, there to remaine
without baile or maineprie, till he hath made
it, and paid the surplussage of his receit. 14.
Elizab. cap. 5. & 27. Elizab. cap. 11. Learne
if the Register booke is yet to haue continu-
aunce.

The *Custos Rotulorum*, or the eldest of the Shirif
Quorum in his absence, ought (at the gene-
rall Sessions after S. Michael) to appoint
two Iustices of the Peace (the one being of
the *Quorum*) to haue the ouersight, and con-
trolment of the Shirifes entring of plaintes
and of their amerciaments. And one of those
Iustices may examine (and without further
enquirie) conuict the gatherers of the same a-
merciaments, if they gather any more money
then is contained in their lawfull Estreits, 11.
H. 7. cap. 15.

Euery person finding or seeing any to of- Crossebowes
fend the Statutes made against the shooting & handguns.
in crossebowes and handgunnes, may arrest
and bring, or conuey him to the next Iustice of
the

the Peace of the countie, where he was found offending, who (vpon due examination and prooffe thereof before him made) may by his discretion commit him to the Gaole, there to remaine till he shall trulie pay the one moitie of the forfaiture of this statute to the Queene, and the other moitie to such first hynger, or conueier, 33.H.8.cap.6.

In this, and such other cases the Iustice of Peace, hauing (as it seemeth) the whole matter committed to himselfe alone, ought to be warie and circumspect, least either he rashlie condemne the guiltlesse, or negligently suffer the guiltie to escape: And vpon the offence sufficiently prooued, it is necessary that in his *Mittimus* (or precept to the Gaoler) there be contained, the names of the parties, with the maner of the offence, and how long time he is to be kept in prison for it.

Furthermore, he is to make a Record of the matter, and to send the Estreit of it into the Eschequer, whereby the Barons may vpon intelligence thereof cause the Queenes dutie to be leuied to her vse. And although the form of the *Mittimus* might be easily fashioned by some other Precedents in this booke, yet for the more ready helpe of the Iustice in this, and towards other like, I will not sticke to leaue him a patterne both of that, and of the Record it selfe also.

To the *Keeper of her Maiesties*

Gaole at *Maidstone*, in the said countie, and to his deputies or deputie there, and to euery of them.

FOrasmuch as this present day, A.B. and *Kent.* C.D. of Halling in the said Countie Yeoman, did arrest, and bring before me at Halling aforeseyd, one I. at S. of Friendsbury in the sayd Countie Mariner, whome they had seene and found the same day (as they said) shooting in a handgun, charged with powder, and a pellet, at a Conie in a certain place in Cuxstone within the sayd Countie called the Churchfield, contrary to the lawe of this Realme, and thereupon prayed me that Iustice might be done in that behalfe.

I Iohn Leueson being the next Iustice of the peace in the said Countie to the place aforeseyd, did then at Halling aforeseyd vpon the sayd request take the examination of the sayd Iohn at S. and did also then, & there heare the proofes of them the sayd A.B. and C.D. touching the sayd offence : And for that it did then manifestly appeare vnto me, as well by the testimonies of them the sayd A.B. and C.D. as also by the plaine confession of him the sayd I. at S. himselve, that hee had not then lands, tenements, fees, annuities, or offices to the cleare yearly value
of

of 100. li. and that hee had shot in the sayd handgunne in maner and forme as is afore-
sayd, I do send vnto you herewith the bodie
of him the sayd I. at S. as conuicted of the
sayd offence : Requiring you in her Maie-
sties name, to receiue him into your sayde
Gaole, and him there safely to keepe as her
Maiesties prisoner, vntill that hee shall haue
truly paid the peine and forfaiture of ten
pounds of lawfull money of England laied
vpon him for his sayd offence, by the Statute
therof made in the xxxij. yeere of the raigne
of the late King Henry the eight, that is to
say, the one moitie thereof to our sayd Soue-
raigne Lady, and the other moitie to them
the sayde A. B. and C. D. the first bringers
of him before me. And this shall bee your
sufficient warrant in this behalfe. Heereof
faile you not, as you will answere for your
contempt at your owne perill. Ycouden at
Halling aforesayd, the twentieth day of Iu-
ly in the nine and twentieth yeare of the
raigne of our sayd Soueraigne Lady Eliza-
beth by the grace of God, Queene of Eng-
land, Fraunce and Ireland, defendor of the
faith, &c.

By me the sayd
Iohn Leneson.

Me-

Memorandum quod 20. die Iulii, Anno re-
gni domina nostra Elizabethæ, Dei gra-
tia, Angliæ, Franciæ, & Hybernæ Regina fi-
dei defensoris, &c. 29. A. B. & C. D. de Hal-
ling in comitatu prædicto Yeomen, quædam I. at
S. de Friendsbury in dicto comitatu Mariner
inuenerunt & viderunt apud Cuestone in co-
mitatu prædicto, die & anno supradictis, in quo-
dam tormento (Anglicè vocat. a handgunne)
onerato pulvere tormentario & globo plumbeo
(Anglicè charged with gunpowder and a lea-
den bullet) in quendam cuniculum ad tunc exi-
stentem in quodam loco ibidē vocatum Church-
field, sagittantem & exonerantem, contra for-
mam Statuti (in Parlamento domini H. nuper
Regis Angliæ octavi, apud Westminster, anno
regni sui 33. tento) editi & prouisi: Ac proinde
die & anno supradictis, præfat. I. at S. arresta-
uerunt, & apud Halling prædict. coram me Ioh.
Leueson, (vno, & dicto loco proximo Iusticiari-
orum, dictæ dom. Regiæ ad pacem in dicto co-
mitatu conseruandam, necnon ad diuersas trans-
gressiones, & alia malefacta in eodem comitatu
perpetrata audiendum & terminandum assigna-
torum) ad tunc vnâ secum adduxerunt, petentes
inde iusticiam fieri. Qua quidem petitione au-
dita, Ego præfat. Ioh. Leueson, apud Halling præ-
dict. die, & anno supradictis, debite superinde ex-
aminavi præfatum I. at S. ac probationes præ-
dict. A. B. & C. D. in hac parte cepi: Ac
propterea

Kanc.

propterea quod tam per probationes predictas, quam per confessionem ipsius I. at S. ad tunc & ibidem apparuit mihi manifeste, quod prefat. I. at S. (cum non haberet in iure suo proprio, nec in iure uxoris sue ad usum suum proprium, nec aliqui alij ad usum eiusdem I. at S. haberent, terras, tenementa, feoda, annuitates, aut officia, ad clarum annum valorem centum librarum) in tormento predicto modo & forma predictis sagittasset, contra formam Statuti predicti, Ego prefat. Iohannes Leueson, prænominatum I. at S. die & anno supradict. proxima Gaola dictæ dom. Regine apud Maidston in comitatu predicto de transgressione predict. conuictum commisi, ibidem moraturum, quousq; pœnam & forissacturâ decem librarum legalis monetæ Angliæ verè soluerit, viz. vnâ medietatem inde dictæ Dom. Reg. & alteram medietatem inde dictis A. B. & C. D. primis eiusdem I. at S. coram me ductoribus. In quorum omnium fidem & testimonium, Ego prefatus Ioh. Leueson, hijs presentibus, sigillum meum apposui, Datum apud Halling predict. die & anno supradictis.

Per me prefatum
Iohannem Leueson.

Handgunne
& crossebow.

And euery person (other then such as are so authorized by the peerey value of one hundred pound, as is aforesayd) ought if he bee licensed to shoote in crossebowe, or handgunne, and

and do inhabite in the countrey, to present his name to the next Justice of Peace adioyning. And thereupon the Justice ought to present and record the same before the Iustices of the Peace at the next Quarter Sessions. 2.E.6.ca. 14. But learne of others, whether this part is to haue continuance still, or els did onely extend to such persons as had licence at that time.

The Superuisors for amendment of the High wayes. high wayes, ought within one moneth after any offence done by any against the Acts (2. & 3. Phil. & Mar. cap. 8 : & 5. Eliz. ca. 13.) to present that offence to the next Justice of the Peace : And thereupon hee ought to certifie the same at the next generall Sessions within the same Countie. 5. Eliz. cap. 13. & 27. Eliz. cap. 11.

Euery occupier of any maner of Iron-works, which shall carpy any coles; Wine, or Iron, to or from the same, betweene the twelfth day of October, and the first day of May perylly, shall likewise carpy, and laie (for euery sixe loades of coale or Wine, and also for euery tunne of Iron that shall bee caried by any waine, or cart, betweene the said dayes, by the space of one mile, thorow any high wayes vnder the hils commonly called the North-downes of Surrey and Kent) one vsuall cart-load of Andar, grauell, stone, sand or chalke, High wayes
in Kent, &c.
F. i. meet

meet for the amending of those high wayes, to be employed in such places thereof, as any Iustice of Peace of the Countie dwelling neere to the place where the said high wayes shall be most annoied by such cariage of cole, Wine, or Iron shall be appointed: or els pay for euery such cart load (so to haue bene caried and laied) two shillings and six pence, within eight daies after the demaund thereof, to the hands of the said Iustice of Peace, or his assignee: the same to be leuied by distresse (after such demaund and default) vpon such Iron, as shall be caried thorow the same high waies, 27. Eliz. cap. 19.

Now, forasmuch as this second booke (containing the power of one Iustice out of the Sessions) hath great varietie, and is thereby growen somewhat long, I will hereto for his ease annexe a summarie and short Table, by which he may suddenly, and at once (as it were) beholde, whatsoeuer he alone (out of the Sessions) may take vpon him.

A Recapitulation of all that which one Iustice of Peace may do out of the Sessions.

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Howbeit, the Iustice of Peace is not (in the execution of any of these Statutes) to sit down and rest himselfe, vpon my short collection or note of them, wherein (howsoever I haue obserued the substance of the matter) the whole manner of the doing could not be comprehended: But he must alwayes lie vnto the Abridgement of the Statutes, or to the bookes at large, and thereby leuel his whole proceeding.

THE THIRD BOOKE,
containing the *Practicque* of
two, or *more Iustices* of the
Peace, out of the *Sessions*.

What things any two *Iu-
stices* of the Peace may doe
out of the *Sessions* : and
therein first of *Riots*, &c.

CAP. I.



THE authoritie
and power of one *Iu-
stice* of the Peace,
(without the *Sessi-
ons*) thus perused
and passed ouer, let
vs now examine the
like power of two,
both in generalitie,

and in particular.

It is vniuersally true, that whatsoeuer
thing one *Iustice* of the Peace alone is per-
mitted to do, either for the conseruation of the
Peace, or in the execution of the Commission
or Statutes, the same also may bee no lesse
lawfully performed by two (or more) *Iustices* :
except it be in a very few cases, where some
Sta

Statutes doe seeme specially to appropriate the execution thereof to some one certaine Iustice, either in respect that he is Next to the place, eldest of the Quorum, or such like.

But we will proceed by particularities: The power of and because the first place (of right) belongeth to the Peace, (as wherein the office of this Iusticer chiefly consisteth) and for that also wee have (in the 5. chap. of the second Booke) disclosed, what an vnlawfull Assemblie, Rout, and Riot be, to the end that one Iustice (which hath some portion of power in them) might thereby vnderstand, what it is that he ought to preuent, or stay (in that behalfe) for the custodie of the Peace: let vs here supply in two Iustices, that power in punishing those Riots, Routs, and Vnlawfull assemblies, which we sayd before to be wanting in one: And that shall we the better do if we first of all lay open the Statute of King Henry the fourth, containing a most ample authoritie, as well for the repressing, as for the Recording of the same: and then may we adioyne somewhat out of some other Statutes also.

IF any *Riot, Assemblie, or Rout* of people against the lawe, bee made, the Iustices of Peace, or three or two (at the least) of them, and the Shirife (or Vndershirife) of the countie, shall come with the power of the coun-

tie (if need be) to arrest them, and shall arrest them, and shall haue power to record that which they shall find so done in their presence against the lawe: And by that Record such offenders shall be conuicted, in maner and fourme as is contained in the Statute of *Forcible entries.* (*viz.* 15. R. 2. c. 2) And if such trespassers be departed before their coming, then these Iustices of Peace, or three, or two of them, shall diligently enquire within a moneth after such *Riot, Assemblie, or Rome* made: and thereof shall heare & determine according to the law of the land: and if the trueth may not be found in the maner as aforesayd, then within a moneth then next following, the sayd Iustices and Shirife (or Vndershirife) shall certifie before the King and his Counsell, all the deeds and circumstances thereof, which Certificat shall be of like force as the verdict of twelue men, &c. And if such offenders doe trauerse the matter so certified, then the Certificat and Trauerse shal be sent into the Kings Bench, to be tried and determined as law requireth. And that the Iustices of Peace dwelling most nighest in euery Countie, or Vndershirife, shal do execution of this Statute, euery one vpon paine of one hundred pounds, to be paid to the King, as oft as they shall be found in default. 13. H. 4. cap. 7.

¶ There

Whereunto the Statute (19.H.7) addeth, Maintenance
that if the sayd Riot, Route, or vnlawfull as- and embra-
sembly, be not found by the sayd Iurie, by cerie,
reason of any maintenaunce, or embracerie
of the sayd Iurours: then the same Iustices
and Shirife (or Vndershirife) shall also certi-
fie the names of the maintainours and em-
bracers in that behalfe (if any be) with their
misdemeanours that they know, vpon paine
of euery of the sayde Iustices and Shiriffe
(or Vndershirife) to forfeit twentie pounds
(if they haue no reasonable excuse) for not
certifying the same: which Certificate so
made, shall be of like force as before, &c.
And euery person duely prooued to bee a
maintainer, or embracer in the same, shall
forfeit twentie pounds to the King, and shall
bee committed to Warde, there to remaine
by the discretion of the Iustices. 19.Hen.7.
cap. 13.

Whereunto also the Statute (2.Hen.5.) Assistance
adiopneth further, That the Kings liege
people (beeing sufficient to trauell) shall
bee assistaunt to these Iustices, Shirife (or
Vndershirife) when they shall bee reason-
nable warned, to ride with them, in aide
to resist such Riottes, Routes and Assem-
blies, vpon payne of imprisonment, and
to make fine and ransome to the King. Pro-
vided alwayes, that the sayd Iustices, Shirife
(or

At the Kings
charges.

(or Vnderſhirife) ſhall do their ſayd offices, at the Kings coſts, in going, tarying, & returning, by payment thereof to be made by the Shirife, by Indenture betweene him & them, of the ſayd payment. And that ſuch Riotters, (attainted of great and hainous Riots) ſhall haue one whole yeares imprifonment at the leſt, without being let out of priſon by baile, mainpriſe, or in any other maner, during the yeare aforeſaid: and that the Riotters (attainted of petite Riots) ſhall haue imprifonment as beſt ſhall ſeeme to the King and to his Councell: and that the fines of ſuch Riotters attainted, ſhall be by the ſame Juſtices encreaſed and put in greater ſummies, then they were woont to be put in ſuch caſes before that time, in aide and ſupportation of the coſtes of the Juſtices and other officers aforeſayd in this behalfe, 2.H. 5. cap. 8.

Capias & Pro-
clamation.

Now, if it be witneſſed by two Juſtices of the Peace, and the Shirife, by Letters vnder their Seales, to the Lord Chauncellour of *England*, that any murders, manſlaughters, batteries, robberies, aſſemblies of people in great number in maner of inſurrection, or other rebellious Riots, haue bene done, and that ſuch offenders haue withdrawen themſelues, to the intent to auoid the execution of the common Lawe, then the Lord Chancellor may make a Writ of *Capias*, and there-
upon

upon (if need be) a Proclamation, &c. 2.H. 5. cap. 9. which Statute was made to indure till the next Parliament, and so discontinued: but it was reuiued by 8. H. 6. and made perpetuall: which moreouer ordaineth, that (before this Writ of *Capius* shall bee awarded) two Iustices of the Peace, and the Shirife of the Shire where such Riot is supposed, ought to witnesse, that the common voice & fame runneth in the sayd Countie of the same Riots. 8.H.6.cap.14.

The letter (or Text) of these lawes being thus laid open, let vs also see what exposition and helpe M. Marrow, and others, doe bring to some partes thereof, and specially to that of king Henry the fourth: as well for arresting the Riotters, as for Recording, Enquiring, and certifying of the Riot it selfe.

Forasmuch as the power giuen by the Statute (17.R.2.c.8.) for repressing of great Assemblies and Riots, was deliuered with such coniuunctiue, and generall words, viz: To the Shirife, and other the Kings Ministers, that it was often doubted, not onely who were meant by the word Ministers, but also whether the Shirife, and any of those Ministers (apart) might performe the seruice, or that they ought all to ioyne together therein: Therefore this Statute (13.H.4.) cleareth those questions, and putteth expresse power into

Some part of
the occasion
of the Statute
13.H.4.

into the hands of any thre (or two) Iustices of the Peace, and of the Shirife, (or Vnderhirife) not onely to arrest such Riotters, but also to conuict them of their offences, by recording of that which they should see to bee done against the Peace.

And this authoritie of assembling the power of the countie, and of arresting, and imprisoning the Riotters, was once before this time (namely, 2. R. 2. cap. 6.) committed to some : but it was by and by after (euen in the selfe same yeare of the same King) resumed, as a thing ouer-hard to be borne (that a Freeman should bee imprisoned, without an Enditement, or other Triall by his peeres, as *Magna Charta* speaketh) untill that the experience of greater euils had prepared, and made the stomacke of the Common wealth able and fit to digest it.

Power of the
Countie.

Nowe, whereas here is mention of the power of the Countie : by vertue of those words, *H. Marr.* thinketh, that the Iustices of the Peace, Shirife, or Vnderhirife, ought to haue the aide and attendance of all Knights, gentlemen, yeomen, labourers, seruants, apprentices, and villaines : and likewise of wardes : and of other yong men that be aboue the age of xv. yeares, because all of that age are bound to haue harnesse by the Statute of *Winchester*. But women, ecclesiasticall persons,

sons, & such as be decrepite, or do labour of any continuall infirmitie, shall not be compelled to attend: for the Statute (2.H..5.c.8. which also worketh vpon the same ground) saierth, that persons sufficient to trauell, shall be assistant in this Seruice. And it is referred to the discretion of these Iustices, Shirife or Vndershirife, how many or how few, they will haue to attend vpon them in this busynesse: and how or in what sort also, they shall be armed, weaponed, or otherwise furnished for it.

But be it, that information bee made to these Iustices, and Shirife (or Vndershirife) that certaine persons be riotously assembled at Dale, and they doe thereupon gather people to suppress them, and when they come to the place, they find no Riot there: yet are they excuseable for this assemblie of power so made by them: because they did it by information.

And though they doe so much without any information, yet if they find a Riot when they come to the place, they shall not onely be excused for calling together such company vpon their owne motion, but may also lawfully proceed to punish the offenders, Fitzh.*titul. Iustic. del P. 9.*

And this they ought to doe by Arrest, if Arrest they be present: In the execution of which arrest,

arrest, they may also iustifie the beating, wounding, or killing, of any of the Riotters that shall resist it. So, if they meet with the offenders in their way riotously araied, and coming from the place, they may neuertheless arrest them for their unlawfull assemblie: And after this arrest so made, the power of the country ought to albe the Shirife for comieighing the Riotters vnto the gaole: without which the arrest were but migation. And in this point it differeth (by the opinion of M. Marrow) from the arrest of a Felon by Huy and Cry: for there (saith he) when they haue once deliuered the Felon vnto the Shirife, they are no longer compellable to waite vpon him.

The Record
of the Riot:
and the cre-
dite thereof.

The arrest thus made, these Iustices, Shirife, or Vndershirife, ought to make a record in writing of that which they see and find: the which (since it is a conuiction in it self against the offendours) ought to be formall and certaine, as well for the time, and place, as for the number, weapon, maner, and other circumstance. For the parties shall be concluded thereby, and shall not be receiued to trauerse, or deny it: because the view of a Riot (as M. Fitzher. saith) is not to bee trauersed. In so much as if either they doe Record, that they saw a Riot, where in trueth there was none at all, or that it do afterwards appeare by the Record it selfe, that the Acte which they Record

ded doeth not amount to a Riot, yet be the parties without any remedie. And if a man bee bound to the Peace, and afterwards such a record of a Riot, is made against him & others, he shall neither iustifie (as M. Marrow holdeth) nor plead not guiltie, in a *Scire facias* upon his Recognisance.

If therefore a man be slayne, or maimed, or any wrongs be done to the officer, by such a Riot, then the record ought to be, *Riotose occiderunt*, or *riotose maimauerunt*, or *riotose resusserunt*: and not *Felonice*, nor simply *resusserunt*: because their authoritie in this case is restrained to the Riot only: and extendeth not to the Felonie, but so, that the parties may (notwithstanding that record) plead not guiltie to the Felonie, or to the Rescousse, howsoever (for the Riot) they are estopped.

And this Record ought to remaine twich the one of them: and they, (and none other Iustices of the Peace) shall imprison the Rioters, and assesse their fine, Marrow: which fine they are willed by the Statute (2.H. 5. cap. 8.) to put in greater summes then they wote woont to be put in such cases, for sup-
portation of the costes of the sayd Iustices, and other officers in this behalfe, as well in going and tarying, as returning, wherof payment ought to be made by the Shirife, by indenture thereof betweene him and them.

But

But if the Riotters shall escape, after that these Iustices, Shirife, or Vnderhirife do come and see the Riot, then can they neither arrest them at any other time (saith M. Marrow) nor a ward Proceſſe against them vpon that Record which they do make: And then, that Record must be sent into the Kings bench, from which place Proceſſe may be made vpon it: where also the parties shall not bee admitted to any traueſe, but must of necessitie make Fine for their offences.

And now, if these Iustices, Shirife, or Vnderhirife shall go to see one Riot, and then another Riot falleth out in their presence, yet may they make a record of that: Marr: So, if they bee assembled for some other cause of seruice, or for some priuate businesse (as for an arbitrement, or such like matter) and a Riot happeneth to be committed in their sight, they may record it: Marrow.

Likewise, if the Riotters shall make a Riot vpon the Iustices, and Shirife that doe come of purpose to arrest them for their former Riot, they may record that also, Marr: and so may they (as I thinke) record any Riot that shall be done vpon themselves, whilst they be assembled for any other cause then for to suppress a Riot, though M. Marrow seemeth to deny it.

These be the things that I haue obserued,
concer

concerning the executiō of these parts of these Lawes, declared against unlawfull Assemblies, Routs and Riots : whereunto I will adioyne a case or twaine, reported by *D. Fitzh.* and will then proceed as I promised.

If two Iustices of the Peace (without the Shirife or Vnder-shirife) shall see certaine persons in doing any Riot, they may cause them to be arrested, and may make a Record of that offence, whereby the parties shall be for ever concluded, *Fitzh. tit. Iustice del P. 9.* whereto hee addeth (in his booke of Iustices of the Peace folio 17.) that if two such Iustices shall make such a Record, where (in trueth) they sawe no such Riot, that yet the parties shall bee estopped, and are without remedie. Now this Record may be made without the Shirife, or Vnder-shirife, since none other Statute giueth this power of recording but this onely, I cannot hitherto perceiue : vnesse it be vnderstood of a Riot, committed in their presence whilest they bee sitting in Iudiciall place, (as in their Sessions) or at the least done to their disturbance, when they be coming vnto the Sessions : and so farre in this way with him goeth the booke, 7.E.4. 18 : as well as that (14.H.7.) which is reported by *Fitzh. titul. Iustice del P. 9.*

The Recording of a Riot by the Iustices,
and Shirife, or Vndershirife, may be af-
ter this (or the like) maner.

Kanc.

Memorandum quod 20. die Ianuarij, Anno
regni domina nostra Elizabethæ, Dei
gratia, &c. vicesimonono, Nos Thomas Fane
Iunior, & Georgius Multon, duo Iusticiario-
rum dictæ dom. Regina ad pacem in com. predi-
cto, &c. assignatorum, & Iacobus Hales miles
ad tunc vicecomes eiusdem comitatus, ad queri-
moniam & petitionem A. B. de C. in dicto co-
mitatu Ycoman, in proprijs personis nostris ac-
cessimus ad domum mansionalem ipsius A. B. in
C. prædicta, ac tunc & ibidem inuenimus D. E.
F. G. H. I. de C. prædicta Labourers, ac alios
malefactores & pacis dictæ Dom. Reg. pertur-
batores ignotos, ad numerum decem personarum
modo guerrino arraiatos, viz. gladijs, pugioni-
bus, galeis, Loricis, arcubus & sagittis, illicitè &
riotose aggregatos, & eandem domum obsiden-
tes, & multa mala in ipsum A. B. comminantes,
in magnam pacis dictæ Dom. Reg. perturbatio-
nem, ac populi sui terrorem, & contra formam
Statuti in Parlamento domini Henrici, nuper
Regis Angliæ quarto, anno regni sui decimo ter-
tio tento, prouisi. Ac propterea nos præfati Tho-
mas Fane, Georg. Multon, & Iacobus Hales
prædicti. D. E. F. G. H. I. &c. tunc & ibidem
arrestari, ac proxima gaola dictæ Dom. Regina

in comitatu predicto duci fecimus, per visionem & recordum nostrum de illicita congregatione & Riota predict. conuictos, ibidem moraturos quousque finem dictae dom. Reg. proinde fecerint. In cuius rei testimonium huic presenti recordo nostro sigilla nostra apposuimus. Datum apud C. predicta, die & anno predictis.

And the *Mittimus* for conueying the Riotters to the Gaole, may be easily (with a few wordes of change) framed out of that which is before in the Chapter of Forcible entries.

But now, as these lawes haue laied downe Enquire of the Riot.
this order of proceeding against the Riotters that shal be deprehended in their offence: So, haue they also provided, that if the offendors be gone, yet their fault shall not escape with them. And therefore, these Iustices are commaunded, first, to enquire of that by others, which they, and the Shirife or Vndershirife, did not see and find: and if the trueth may not thereby be found, then to certifie what be the impediments.

To this Enquirie, the Shirife or Vndershirife, be not associated, as they were before in arresting the Riotters and recording their disorder: because they are now ministers, for returning of the Enquirie, and therefore to be spared from being Iudges.

And albeit these Iustices do not goe to see the Riot as this Statute biddeth, yet may they Enquire thereof within the moneth after. And euery Iuror of this Enquirie, ought to haue lands in that countie to the value of xx.s. by yeare of Freehold, or xxvi.s.viii.d. of Copyhold, or of both, aboue all charges: vpon euery of which also, the Shirife ought to return xx.s. in issues at the first day, and xl.s. at the second day. 19.H.7.cap.13.

Moreover, where the Statute saith, that the same Iustices shall Enquire, yet if any other Iustices of the Peace there (and not they) shall do it, that will suffice, Marr: Neither is it of such necessitie to haue the Enquirie within the moneth, that for default thereof the presentment shall be void (for the Iustices of the Peace may Enquire thereof at any time by force of their Commission) but if it be not had within the moneth, euery of them that be the next, is in daunger to loose 100. li. for it. And therefore, if these Iustices do charge the Iurie within the moneth, and doe giue day vnto them for peelding their presentment after the moneth, the Statute is not offended by it. Marrow. But if it happen the parties to fall to an accord amongst themselves, so as none of them will sollicite the Iustices to make the Enquirie: yet ought the Iustices to proceed *Ex officio*, as knowing that epyther some of the

the Iurie, may haue knowledge of the fact, or that (vpon Proclamation made to giue Euidence for the QUEENE) some other persons may come forth readie to enfourme them.

The trueth of the matter being found by this Enquirie, these Iustices haue authoritie by this Statute not onely to make out Processe against the offendors vnder their owne *Tesse*, but also to commit the to prison till they make their Fine, and to deliuer them after payment of the same, or vpon suerties taken for it: or otherwise to receiue their trauerse, and thereupon (if the matter will so serue) to discharge, and dismisse them.

For, to all these effects (as I thinke) the words of the Statute (heare, and determine according to the law of the land) do lead and enable them.

On the other side, if by this Enquirie the fault be not brought to light, being hindered, either by the malicious peruersitie of the Jurors themselves, or by the vnlawfull maintenance, countenance, or embracerie of other men that put themselves into the cause: yet ought there (within one moneth after such Enquirie) a Certificate to be made, as well of the names of the principall offendors, and of so much of the fact, and circumstances thereof as may by any waies or means appeare, as also

Certifie the
Riot.

And albeit these Iustices do not goe to see the Riot as this Statute biddeth, yet may they Enquire thereof within the moneth after. And euery Iuror of this Enquirie, ought to haue lands in that countie to the value of xx.s. by yeare of Freehold, or xxvi.s.viii.d. of Copyhold, or of both, aboue all charges: vpon euery of which also, the Shirife ought to return xx.s. in issues at the first day, and xl.s. at the second day. 19.H.7.cap.13.

Moreouer, where the Statute saith, that the same Iustices shall Enquire, yet if any other Iustices of the Peace there (and not they) shall do it, that will suffice, Marr: Neither is it of such necessitie to haue the Enquirie within the moneth, that for default thereof the presentment shall be void (for the Iustices of the Peace may Enquire thereof at any time by force of their Commission) but if it be not had within the moneth, euery of them that be the next, is in daunger to loose 100. li. for it. And therefore, if these Iustices do charge the Iurie within the moneth, and doe giue day vnto them for yeelding their presentment after the moneth, the Statute is not offended by it. Marrow. But if it happen the parties to fall to an accord amongst themselves, so as none of them will sollicite the Iustices to make the Enquirie: yet ought the Iustices to proceed *Ex officio*, as knowing that eyther some of the

the Iurie, may haue knowledge of the fact, or that (vpon Proclamation made to giue Euidence for the QUEENE) some other persons may come forth readie to enforme them.

The trueth of the matter being found by this Enquirie, these Iustices haue authoritie by this Statute not onely to make out Processe against the offenders vnder their owne *Teste*, but also to commit the to prison till they make their Fine, and to deliuer them after payment of the same, or vpon suerties taken for it: or otherwise to receiue their trauerse, and thereupon (if the matter will so serue) to discharge, and dismisse them.

For, to all these effects (as I thinke) the words of the Statute (heare, and determine according to the law of the land) do lead and enable them.

On the other side, if by this Enquirie the fault be not brought to light, being hindered, either by the malicious perversitie of the Jurors themselves, or by the vnlawfull maintenance, countenance, or embracerie of other men that put themselves into the cause: yet ought there (within one moneth after such Enquirie) a Certificate to be made, as well of the names of the principall offenders, and of so much of the fact, and circumstances thereof as may by any waies or means appeare, as also

Certifie the
Riot.

of the names of such maintainers, and embassers, & of their misdemeanors in this behalfe.

And here the Shirife (or his Vnder Shirife) is once more called to this seruice, and ioyned with these Iustices: who by reason of his presence at the Enquirie, may both helpe to espie the euill, and adde force, and credite to the Certificate. The ende of which Certificate, is but onely to put the offendours to answer: for, although the words of the Statute doe make the certificate equall in force with the verdict of xii. men: yet, forasmuch as it followeth in the same Statute, that the Certificate may bee trauerse, that is a playne prooffe, that it is no conuiction at all, but is onely of the nature of a declaration, presentmēt, or enditement, at the common law: and therefore also, it ought to comprehend the certaintie of the time, place, persons, and other circumstances, though perhaps (as *Dr. Marrow* holdeth) it needeth not to expresse the additions of the parties, as not being within the words of the Statute (1. H. 5. cap. 5.) because no processe of vclawrie doth lie vpon it.

And, whereas the Enquirie is good, though it be had after a moneth from the offence committed, this Certificat (*saieth Marrow*) is not good, vnlesse it be made within the moneth after the Enquirie: because the power of certifying is giuen by the Statute onely, which is
the

the Warrant that they must pursue.

Moreouer, where the Statute willet that they shall certifie before the King and his Counsell : it seemeth to mee, that the same ought to bee done, either to the body (and boord) of the priuie Counsel, or into the Starre Chamber at the least : because the Statute it selfe doeth by expresse wordes distinguish the King and his Counsell heere, both from the Chancerie, and from the Kings bench, which in many other cases be taken for the king, and his counsell also. And this I doe the rather note, because it is penall to those Iustices, Shirife, or Vndershirife, if they shall not adressed their certificate, as the statute appointeth the.

But now, if two Iustices, and the Shirife, go to see a Riot, and other two Iustices make the Enquiry: then the one sort or the other of them, with the Shirife, or Vndershirife may make the Certificat, Marr. And if foure Iustices, the Shirife, and vndershirife goe to see a Riot, and two of those Iustices, and the Shirife ioyne in one Certificate, and the other two, and the vndershirife ioyne in an other Certificate, then that Certificat whereunto the Shirife is partie shalbe preferred: because the authoritie of the vndershirife, is overshadowed by the Shirifes presence, Marrow. But otherwise, if two Certificates be equall, then that shall be preferred which is best for the Queene.

And the same rule must holde, where the Enquirie, and Certificate shall disagree: for, if the Enquirie shall find that the Riot was made by xii. persons, where in trueth it was made by 100: or if the Enquirie be of xii. persons, and the trueth is that those xii. were harnessed: or if the Enditement be of a riotous assault only, and the Riotters did both make an assault, and did beate, & wound: in these, and the like cases, the Certificat may well be made so, as the omission in the Enquirie shall be supplied by it. Marr. Howbeit (he sayeth) that if they shall varie onely in the day, then the Enditement shall be preferred. And if after the Enquirie, and before the Certificate the Shirife dye, or one of the Iustices bee put out of the commission, no Certificate can then be made. Marr. But if the Riot were recorded by the Iustices, and Shirife, and the Riotters doe escape, yet may that Iustice of the peare (so put out of the commission) ioyne with the other Iustice, and the Shirife in their Certificate of the same, Marrow.

These speculations of M. Marrowes reading, are like enough to fall in practise, and therefore I thought it not amisse to acquaint the Reader before hand with them.

There remaineth yet, the last branch of the Statute (13. H. 4.) that willet the Iustices of Peace most nigh in euery Countie, to the place

place (where such Riot, or Route shall be) to do execution of this Statute, vnder the payne of 100. li. vpon euery of them for e-
 uery default. Upon which words, these notes The peine of 100.li.vpon the Iustices.
 may be gathered: First, that no Iustice of the Peace dwelling out of the countie, (where the Riot is) can be charged, although he bee the next vnto the place: Secondly, that if any o-
 ther Iustices (that be not next vnto the place) shall execute the Statute, then that wil excuse those Iustices that be the next, because they all haue power by the first part of the Statute.

And this is the cause for which I haue taken leaue to place these things before, vnder the authoritie of any two Iustices generally, although the Statute doth specially (and that by a greater paine) bind them that be the next. Yea, all the Iustices of Peace (within the commission and countie) ought to supply the default of the next Iustices, if they haue notice of such vnlawfull Assemblie, Rout, or Riot: for, so was it lately aduindged in the Starre chamber: howbeit that penaltie of 100. li. was there laid vpon the next Iustices only, and the residue were fined by the discretion of that Court, according to the exigencie and temper of their fault.

Thirdly, that if one or two of the Iustices of the Peace, (that be next to the place) shal come to execute the Statute, and the Shirife, or Vnder-shirife,

der-shirife, do not come at all, yet those Iustices shall be excused for their 100. li. And Mr. Marrow thinketh that in this last case, the Iustices be bound to send for the Shirife or Vnder-shirife, and not they for the Iustices: and in the same case also it seemeth, that the Iustices shall be fined if they arrest not the Rioters, or do not moreouer all that which without the Shirife or Vnder-shirife, they are by any way authorized to performe.

Lastly, that they shall do execution of this Statute, that is to say, of all, and euery part thereof, respectiue as to such Iustices, Shirife or Vnder-shirife, is thereby appoynted. But whether they are to take notice of such Riots at their perill, or may safely expect the information thereof, I find it both doubted and vndercided, *Collect. Dyar. 110. 25.*

Thus much of these things after this consideration: now to some precedents for the furtherance of these Iustices in the execution, and then to our other matters.

The Precept to the *Shirife*, for enquire vpon a *Riot*, may beare this Forme.

Kanc.

Thomas Fane, & Georgius Multon, duo Iusticiariorum, &c. assignatorum, vicecomiti eiusdem comitatus, Salutem: Ex parte dicta dom. Reg. tibi precipimus, quod venire faci-

as

as coram nobis apud I. in com. predicto, 29. die Ianuarij proxime futuro 24. probos, sufficientes, & legales homines de comitat. predicto, quorum quilibet habeat terras & tenementa, infra dictum com. liberi tenementi per chartam ad annum valorem 20. sol. aut per copiam rotulorum Curia ad annum valorem 26. solid. & 8. denariorum, aut per utrumq., ultra omnes reprisas: ad inquirendum pro dicta domina Regina ac pro indemnitate nostra in hac parte, super sacramentum suum de quibusdam illicitis aggregationibus & riotis apud C. in comitat. predicto nuper commissis ut dicitur. Et hoc nullatenus omittas sub poena 20. lib. quam incur surus es si in executione premissorum defeceris. Et habeas ibi tunc nomina Iuratorum predictorum, & hoc praeceptum: Datum sigillis nostris, 20. die Ianuarij, Anno regni dictae domine nostrae Eliz. &c. vicesimo nono.

The entrie of the presentment (or Enquire) may haue this forme.

Inquisitio pro domina Regina, &c. (as before **Kanc.**
 In forcible entries) coram Thoma Fane, & Georgio Multon, &c. Qui ad hoc iurati & onerati, dicunt super sacramentum suum predictum, quod D. E. F. G. & H. I. simul cum alijs malefactoribus, & pacis dictae dom. Regina perturbatoribus ignotis, ad numerum septem personarum,

narum, modo guerrino arraiat. vi & armis, viz. Hawberdis, gladijs, arcubus, & sagittis 20. die mensis Ianuarij, ult. praterito, apud C. in com. predicto inter horas octauam & nonam, post meridiem eiusdem diei domum mansionalem A.B. de C. predict. Yeoman, scituatam in C. predicta, yotosè fregerunt, & intrauerunt, & in ipsum A.B. tunc & ibidem insultum fecerunt, ac ipsum tunc & ibidem verberauerunt, vulnerauerunt, & indignis modis tractauerunt, ita quod de vita eius desperabatur, in magnam pacis dicta domina Regina perturbationem & populi terrorem, ac contra formam Statuti de Riotis, Routis, & congregationibus gentium illicitis in parlamento domini H. nuper Regis, Angl. 4. Anno regni sui 13. tento, editi & prouisi.

And as for the Certificat (which ought to be made to the Queene, and the Counsell) that may be done in English, by way of a Letter, comprehending the trueth of the matter present, as the case shall require.

And here, let vs leaue these unlawfull Assemblies, Routs, and Riots, and adresse our stile to other Statutes.

Seruants and
Labourers.

Any two Iustices of the Peace, (vpon complaint, that any seruauent retained by the statute, departeth before the end of his terme, or
at

at the end therof without a quarters warning,
 or that any person compellable by the statute
 to serue, doth refuse to serue for the wages ap-
 pointed) may examine the matter, and (finding
 such seruauant, or person faultie) may commit
 him to ward, there to remaine, till he shall be
 bound to the partie offended, to serue and con-
 tinue according to the Statute : They also,
 may imprison for ten dayes, the master that
 giueth, and for xxi. dayes the seruauant that ta-
 keth, more wages then after the rates thereof
 made : and may imprison for a whole yeare,
 such seruauant as shall be conuicted before them
 (by his owne confession, or by the Oaths of
 two honest men) to haue made any assault vpon
 his master, maistrisse, or other person ha-
 uing the charge of him, or of the worke : and
 they may appoint any woman (being vnma-
 ried, of the age of twelue yeares, and vnder
 fortie) that is out of seruice, and that they shall
 thinke meete to serue, to be retained by their
 discretion, and may vpon her refusall commit
 her to Ward; till she will be so bound to serue.
 5. Eliz. cap. 4.

Any two Iustices of Peace, may licence
 such as be deliuered out of Gaoles, to beg for
 their fees, or to trauell to their Countrey, or
 friends : and may giue licence for fortie dayes
 to a Rogue that is marked : and may make
 testimoniall to a Seruingman, that is turned
 away

Beg for fees.
 Rogue.
 Seruingmen.

away from his master, or whose master is dead: 14. Eliz. cap. 5. & 18. Eliz. ca. 3. & 27. Eliz. cap. 11.

**Surcharged
with poore.**

Such two Iustices may certifie at the quarter Sessions, that a Citie, or Towne Corporate, of the Shire (being no Countie of it selfe) is surcharged with poore, together with the names and number of them, that order may be taken there for their reliefe: and they may Licence diseased persons (liuing of almes) to trauell to Bathe, or to Buckstone, for remedie of their grieffe. 14. Eliz. cap. 5. & 27. Eliz. cap. 11.

**Licence to go
to Bath, or
Buckstone.**

**Change a
high way.**

By the ouersight of any two Iustices and twelue discrete men of the Hundred, & Hundreds adioining, any person (within the Weald of Kent) may make in his owne land a new highway, more commodious then the old, 14. H. 8. cap. 6.

**Appoint O-
uerseers of
Cloth.**

Two such Iustices may once euery yeare appoint Ouerseers (for that whole yeare following) of Cloth to be made or sold, in any towne (not being Corporate) and may charge them vpon their oathes, to see execution of some partes of the Statute. 3. E. 6. cap. 2. yet in force.

**Disturbe a
Preacher.**

Within sixe dayes (after accusation had, that any person hath disturbed a Preacher, and after his committing to safe custodie by one Iustice of the Peace) one other Iustice of that

that Shire must ioyne with him in the examination of the Offender, and may proceede to find him guiltie by his owne confession, or by two witnesses, and thereupon commit him to the next Gaole, for three moneths. 1. Mar. Par. 1. cap. 2. Aske of the continuance of this Statute, as before.

Any two Iustices of the Peace of the countie, where any Logwood (*alias* Blockwood) shall be found, in whose hands soever, may openly burne the same, as forfeited. 23. Eliz. cap. 9.

Any two Iustices of Peace, of the Countie (where any of her Maiesties subiects (not being a Iesuite, Seminarie priest, or other priest, religious, or ecclesiasticall person, &c.) now being, or which hereafter shall be of, or brought by in, any college of Iesuites, or Seminaries, shall arrive within six moneths next after proclamation to be made in that behalfe in the citie of London vnder the great Seale of England) may within two dayes next after such returne, receiue his submission, vnder the oath set forth by Act in the first yeare of her Maiesties reigne. 27. Eliz. cap. 2.

If any person, that ought to be set to the Subsidie, do by his craft or couine escape the Taxation, and that be prooued before two Iustices of Peace of that Countie: then shall he be charged at the double value of so much as he

he ought to haue bene taxed at, and shall further be punished at the discretions of the sayd Iustices. 29. *El. Reg.* and diuers former acts of subsidies.

What things, some two Iustices
of the Peace may do out of the *Sessi-*
ons: and therein of Bailement.

CAP. II.

If falleth out many times, that the Statute lawes regarding some Iustices aboue others, either for the opinion of the abilitie or learning that they should haue (being of the *Quorum*) or for the aduantage and facilitie that they haue to dispatch the affaire by meanes of their nearenesse and dwelling, or for the indifferencie that they are likely to vse in the handling of the cause (as being neither of kindred, nor alliaunce to any of the parties) do many times make choise of some two Iustices: and doe either altogether close the hands of the rest, or els doe chiefly repose the trust in these that be so chosen and elected.

Bailement.

Amongst those of this kind, the Statute for Bailement of prisoners worthily craueth the first place, whether you respect the weight of the matter that it concerneth; or the length of the discourse that it requireth, the one tending
to

to desired libertie, and the other comprehending much varietie.

This sauing then (or deliuerie) of a person out of prison, before he hath satisfied the Law, is vttered by three termes in our Statutes, that is to say, Bailement, Mainprise (or *maincapcion*) and Repleuine. And they be indifferently vsed to expresse that suertie which the prisoner is to finde in such a case. If or, that which Bracton and the Statute of W. 1. cap. 15. (made 3. Edw. 1.) doe speake, of setting at libertie of Accessories by the wordes *Replegiari*, and of letting out by sufficient Pleuain: Britton and the Register doe expresse by finding of Mainprise: the Statute 5. Edw. 3. ca. 8. by letting to Baile: that of Marlebridge cap. 27. (made 5 2. Hen. 3.) by *tradi in ballium, vel Replegiari*. And the Statute of 2. Ed. 3. cap. 9. making mention of the writ *De homine Replegiando* to be directed to the garden of a Forest, declareth the effect thereof to be, that he should Repleuy the prisoner by good Mainprise. The Statute 23. H. 6. ca. 10. that commaundeth the Shirife to let out of prison (such as he hath arrested vpon Enditements of Trespasse) vpon reasonable suertie of sufficient persons, calleth the same a letting to Baile or Mainprise. And lastly, 1. & 2. Phil. & Ma. c. 13. seemeth to make all the three words *etiam* and of the same signification,

Difference
betweene
Bailement,
Mainprise, and
Repleuine.

Repleuine.

Neuerthelesse it seemeth, that Repleuine had his originall of the word Pledges, which denoteth them that undertake for the partie, that he shall abide to be iustified by law: And it is vsed in diuers other cases, as in Repleuine of cattell vpon a distresse, Repleuine of Franchises in a *quo Warranto*, Repleuine of Land vpon a *Grand Cape*, in old time, and Repleuining of the person of a man in the case of Villenage.

Bailement.

Bailement, is deriued from the French terme Bailler: And that also commeth of the Greeke (*Βαίνειν*) they both signifying, to Deliuer into hand. For, he that is Bailed, is taken (or kept) out of prison, and deliuered (as it were) into the hands of his friends, as Suer-ties for him, whereof also the word *Manucap-tio* (or Mainprise, which is all one) giueth good euidence: the one mentioning the deliuerie, the other the receiuing of such a prisoner. And in this respect, the booke of the *Norman Customes* calleth Bailement, a liue prison: for that the partie thereby becommeth prisoner to his friends, that do undertake for him.

Mainprise.

But Bailement and Mainprise haue bene taken to differ in the practise of our Common law: for he which is properly Bailed by the Iustices of any Court, hath bene neuerthelesse reputed to be a prisoner there still, and his suerties

erties to be (as it were) his special gardeins: otherwise it hath bene thought of him that is let to Mainepriſe, as may bee ſeene by the Booke caſes, 33.Edw.3 : & 36.E.3. *Corone Fitzh.* 12.& 13 : 7.Hen.6.42 : 31.H.6.10 : 38.H.6.23 : 9.E.4.2 : & 21.H.7.33. But at this day, how long he ſhal be adiudged to be a priſoner, *Et in Custodia Marſcalli Marſcalcia, &c.* that is Bailed in the Kings Bench, the cuſtome of the Court it ſelf muſt rule the matter: for it differeth ſomewhat (if I be not deceived) from thoſe opinions.

Howbeit, forasmuch as in our courſe (concerning Juſtices of the Peace) it is not ſo needfull to ſtay vpon the difference betweene the words, as to proceed to diſcloſe the uſe and maner of the thing: Let vs examine the power of the Juſtices of Peace in this behalfe.

It ſeemeth, that Juſtices of the Peace might (after the Statute 34.Ed.3.cap.1. that made them complete Judges) haue letten to baile ſuch perſons as were indited of Felonie before them in their Sessions, euen as the Juſtices of the Kings Bench uſe to do: but not ſuch as were arreſted for ſuſpicion of Felonie, and not endited thereof before them, becauſe before the enditement they were no Judges ouer them. And for helpe herein, it was ordained (1.R.3.c.3.) that euery Juſtice of Peace might let to Baile any ſuſpects of Felonie.

But that Law begate some inconueniences, and therefore it was soone after repealed (by 3.H.7.) which left power to two Iustices of the Peace (the one being of the *Quorum*) to let any prisoners (mainpernable by the law) to baile to the next generall Sessions, or the next Gaole deliuerie: and willeth, that they shall then certifie such baile taken, vpō paine to forfeit for euery default (therupon recorded) ten pounds to the King, 3.H.7. cap.3. And here againe there sprang vp an other inconuenience: for then Iustices of Peace would not sticke to borrow one an others name, (as many yet still do) and by that means defraud the good meaning of the statute: Whereupon it was lastly further prouided (by 1. & 2. Ph. & Mar.) as followeth:

Bailement of
prisoners, and
examination
before they
be bailed.

That no Iustice, nor Iustices of Peace, should let to baile any person contrary to the sayd Statute of *West.* 1. cap. 15. And that no person, being arrested for Manslaughter, or Felonie, or for suspicion of either of them, (being baileable by the Law) should be bailed, by any Iustice of Peace, if it bee not in open Sessions, or by two Iustices of the Peace at the least (the one of them being of the *Quorum*) and the same Iustices to bee present together at the time of the sayd Bailement: and that they shall certifie (in writing, subscribed, or signed, with their owne hands)

hands) the sayd Bailement or Mainprise, at the next generall Gaole deliuerie, to be holden within that Shire, where that person shall be arrested, or suspected: And that the sayd Iustices, or one of them, (being of the *Quorum*,) when such prisoner is brought before them for Manslaughter or Felonie, shall before any bailement) take the examination of that prisoner, and the information of them that bring him, of the fact and circumstances thereof: & the same, or so much thereof, as shall be materiall to prooue the Felonie, shall put in writing before they make that Bailement: which examination and bailement, the sayd Iustices shal certifie at the next Gaole deliuerie within the limits of their Commission: And the sayd Iustices shall haue authoritie by this Acte, to bind all such by Recognisaunce (or Obligation) as do declare any thing materiall to prooue the sayde Murder, or Manslaughter, offences, or Felonies, or to be Accessorie or Accessories to the same, as is aforesayd, to appeare at the said next Gaole deliuerie, where the triall thereof shall be, then and there to giue euidence agaynst the partie, at the time of his triall: and shall certifie all and euery such bond, in like maner, as is abouesayd of the Bailement and examination, 1. & 2. Phil. & Mar. cap. 13.

This statute of Bailement I haue purpose-ly recited at large, because it both comprehendeth some such other things as must concurre with the Bailement of the prisoner, and prouoketh me to set downe the Statute of W. 1 : and to shew what persons be baileable by the Law : for, to either of these it referreth it selfe (as you haue scene) and is also restrained by them.

Persons baile-able, and not.

Now, by the Statute of W. 1. cap. 15. Prisoners that be before outlawed, or haue abjured : prouours : felons taken with the manner : those that haue broken the Kings prison : notorious & proclaimed theeves : those that are appealed of prouours, so long as the prouours be liuing (if they bee not of good fame :) those which are taken for felonious burnings, or for falsifying the Kings money, or his Seale : or which are taken vpon excommunication, or for open euil, or for treason touching the King himselfe, or for the death of a man, or by the commaundement of the King himselfe, or of his priuie Counsell, or by the (absolute, and not ordinarie) commaundement of the Kings Iustices, or for the Forest : bee not repleuisable by the common Writ, nor without Writ, by Shirifes, nor other gardeins of prisons. But hee that is taken for light suspicion : or is indited of *petite Larcenie*, (not being guiltie before
of

of other *Larcenie* :) those that bee charged with the receipt of theeves, or felons, or of commanding, or force, or aide : or charged with Trespasse, that toucheth not losse of life, nor member : and he that is appealed by a Prouour (being no common theefe, nor defamed) after the death of the Prouour, is baileable by that Statute.

Againe, the Statute 23. H. 6. cap. 10. prohibeth those that be in prison by condemnation, execution, *Capias utlagatum*, excommunication : for Suertie of the Peace : or by speciall commaundement of any Iustice, to be bailed, by Shirife, Keeper of prison, or other Officer or Minister : But willeth and commandeth, that all those that be *Arrested* by force of any Writ, Bill, or Warrant, in any action Personall, or because of any enditement of *Trespasse*, bee let out of prison vpon reasonable suerties of sufficient persons hauing sufficient within the Counties where they be, to be let to Baile or Mainprise, to keepe their dayes in such places as the sayde Writs, Bills, or Warrants shall require.

Both these last Statutes (as appeareth) were at the first made to giue a rule vnto Shirifes and other officers, as well for the letting to baile, as for the retaining of their prisoners. But as the Statute of W. 1. is by the expresse letter of 1. & 2. of Phil. & Mar. set forth as a

line wherby the Iustices of Peace are to guide theselues: so it seemeth to me, that they ought to haue an eie vnto the other Statute also: forasmuch as certaine other persons be therein also mentioned not to beailable by law, and so within the reach of the very words that lie in the Statute of Philip and Mary.

Baile for
Manslaughter

And first, this statute (1. & 2. Phil. & Mar.) seemeth to distinguish these words (Death of a man) that are read in the statute of *Westminster* the first, and in this place to restraine them to Murder onely: seeing that it admitteth, that (for some death, or Manslaughter) the slayer may bee lawfully bailed: which also is the common practise in that behalfe.

We learne also, that he which (within the yeare) is acquitted of Murder, or Manslaughter, at the Queenes sute, must be remitted to prison, or let to mainprise, till the end of the yeare: and the partie griued may in the meane time commence his appeale, 3. H. 7. cap. 1.

It seemeth moreouer, that he which is endited of Felonie, is not baileable, *lib. Ass. 41. pl. 30*: nor hee which confesseth the Felonie, whereof he is accused: for, that Statute (*West. 1.*) meaneth to exclude the one, when it saith, that hee which is endited of Petite larcenie may be bailed: and the other, when it denieth Baile to a Prouour, who must begiune with
con:

confession of his owne fault, before he may be admitted to burthen an other man.

And if a man be taken vpon Procelle of rebellion, issuing out of the Chancerie, or Starre chamber, those Iustices of peace may well be thought voide of discretion, that shall take vpon them to baile him.

Further, me thinketh that I may set down this as a rule (euen at the common lawe) concerning Bailementes. That the Iustices of the Peace can not meddle with the Bailement of any prisoner, except hee be prisoner for such a cause, whereof the Iustices of Peace bee competent Judges. Which also was the cause, that one Iustice of the Peace could not by force of the Commission onely, haue bayled suspectes of Felonie, before that they were indited thereof as I haue told you. For, out of their Sessions, and before inditement, they were no Judges of such a matter.

And on the other side, it seemeth that two Iustices of the Peace (the one of them being of the *Quorum*) may, out of the Sessions baile such as come into prison by the procelle of the Sessions made vpon penall lawes, not forbidding Baile: because two such Iustices bee competent Judges of all those matters, inso much as they may heare and determine them.

Sundrie doubts (I confesse) may be made

con

Aduise, con-
cerning baile-
ment.

concerning the businesse of Baile, which I am not able to dissolve, and therefore am not much willing to mooue. Onely this I will say for all, that it becommeth Iustices of the Peace to be very circumspect in granting Baile, both for feare of wrong by denying it to him that is repleuisable, and for feare of danger to the seruice it selfe by giuing it where it is not grauntable.

And therefore I aduise them, to consider, first, whether the power of Baile (whē it is required) be not taken frō them by some of those former recited statutes: and then, whether that particular Statute it selfe (against which the prisoner is charged to offend) do not specially prohibite the Baile: for you shall meete with many statutes, which do not onely take baile from the offenders thereof, vpon their solempne conuiction after Iudgement, but also vpon the Record of some one or two Iustices of the Peace, or by examinatio, or prooofe by witnesses, or such other priuate trial had before them.

For example, take a few of each kind, seeing it would prooue troublesome to report them all.

Liueries.

1 He that is conuicted before the Iustices of the Peace, vpon the statute of Liueries, shal be committed to prison for one whole yeare without Baile or Mainprise. 8.H.6.c.4.

2 He that is conuicted before them, for abusing

sing a licence of transporting virtuall, shall likewise be committed by them, and shall remaine there a whole yeare without Baile, or Mainprife. 1. & 2. Phil. & Mar. cap. 5. Licence to transport.

3 He that is conuicted before them for offending the statute made against forestalling, &c. shall bee committed to the Gaole for two moneths without Baile or Mainprife. 5. E. 6. cap. 4. Forestalling.

4 And he that is conuicted before them for offence against the statute of Musters, shall be awarded to remaine in prison without Baile or Mainprife, till he haue paid the forfeiture, 4. & 5. Phil. & Mar. cap. 3. Musters.

1 Againe, if any one Iustice of the Peace shall find, or know, any to haue exercised any vnlawfull games, he may commit him without Baile or Mainprife, till he will become bound no more to vse vnlawfull games. 33. H. 8. cap. 9. Games.

2 So, he that is conuicted before two Iustices of the Peace to haue refused to serue for such wages as is by order appointed, shall remaine in prison without Baile or Mainprife, till he will be bound to serue accordingly. 5. El. cap. 4. and the like is, of some other points in that statute. Seruant.

3 He that is committed by two Iustices of the Peace, for keeping a common Alehouse, of his owne authoritie, shall remaine in prison three

three daies, &c. without Baile or Mainprife. 6. Ed. 6. cap. 25.

Bastarde.

4 And the reputed father or mother of a Bastarde childe, that will not perfourme the order set downe by two Iustices of the Peace thereto auctorized, shall be committed, and shal remaine in prison without baile or mainprife, till he or she will be bound, &c. 18. El. ca. 3. & 27. El. ca. 11.

The most of the rest shall onely be pointed out, that the Iustices may in a sorte be warned of them, thus shortly.

Prophecies.

Witchcraft.

Periurie.

Seruice.

Schoolemast.

Preachers.

Tithes.

Poore.

Souldiors.

Bridges.

Bowes.

Apparell

Sheepe.

Hawkes, &c.

5. Eliz. cap. 15. touching Prophecies.

5. Eliz. cap. 16. concerning Witchcraft.

5. Eliz. cap. 14. of Periurie.

1. Eliz. cap. 2. touching Common prayer.

23. Eliz. cap. 1. touching Schoolemasters.

1. Mar. cap. 3. of disturbing Preachers.

27. Hen. 8. cap. 20 : & 32. Hen. 8. cap. 7 : of Tithes.

14. Eliz. ca. 15. of Collectors for the Poore.

2. Edw. 6. cap. 2. of Souldiours selling harnessse.

22. Hen. 8. cap. 5. of Collectors for Bridges.

33. Hen. 8. cap. 9. of Aliens, conueying long Bowes.

1. & 2. Phil. & Mar. cap. 2. of wearing silke.

8. Eliz. cap. 3. of transporting Sheepe.

5. Elizab. cap. 21. of taking Fishe, Deere, Hawkes.

Hawkes.

- | | |
|---|---------------------|
| 5. <i>Eliz.</i> cap. 5. of eating <i>Flesh.</i> | <i>Flesh.</i> |
| 9. <i>Hen.</i> 5. cap. 8. Parl. 2. of <i>False weights.</i> | <i>Weights.</i> |
| 14. <i>Eliz.</i> cap. 5. of <i>Vagabonds.</i> | <i>Beggars.</i> |
| 1. <i>Mar.</i> cap. 12. & 1. <i>Eliz.</i> cap. 16. of <i>Rebellious Assemblies.</i> | <i>Assemblies.</i> |
| 2. <i>Hen.</i> 5. cap. 8. of <i>great Riots.</i> | <i>Riots.</i> |
| 23. <i>Hen.</i> 8. 2. of <i>Collectors of Gaole money.</i> | <i>Gaole money.</i> |
| 18. <i>Eliz.</i> cap. 3. of <i>Gouernors of the poore,</i>
and of houses of <i>Correction.</i> | <i>Poore.</i> |
| 5. <i>Rich.</i> 2. cap. 2. of <i>Forcible holding.</i> | <i>Force.</i> |
| 13. <i>Eliz.</i> cap. 21. of <i>Purueiance</i> neere to
the <i>Vniuersities</i> : and 23. <i>Hen.</i> 6. cap. 14.
of <i>Purueiors</i> of noble men. | <i>Purueiors.</i> |
| 1. & 2. <i>Phil.</i> & <i>Mar.</i> ca. 5. of <i>carying Corne.</i> | <i>Corne.</i> |

And so, if there be any other setwe, wherein Iustices of the Peace may not graunt Baile, though otherwise they haue to deale: for, such as be not of that sort, I do willingly pretermitt them.

Nowe, for an ende of Bailement, I will shew you one forme of a Baile, and another of the Liberate.

Memorandum, quod 20. die mensis Iulij, *Kanc.*
 Anno regni domina nostra *Eliz.* & c. 29. The Baile.
 Venerunt coram nobis R.B. & W.L. duobus In-
 sticiariis, & c. assignatorum, apud H. in comi-
 tatu predict. A.B. & C.D. de E. in dicto comi-

tatu Yeomen, & ceperunt in Ballium, vsque ad proximam gaole deliberationem in dicto comitatu tenendam, quendam F. G. & c. Labourer, captum, & detentum in prifona pro suspitione cuiusdam Felonia, & c. Et assumpferunt super se, scilicet quilibet predict. A. B. & C. D. sub pœna 20. lib. bone & legalis moneta Anglia, & predict. F. G. assumpsit pro seipso sub pœna 40. librarum similis moneta de bonis & catallis, terris & tenementis eorum, quorumlibet, & cuiuslibet eorum, ad opus dictæ dom. Reg. Heredum, & successorum suorum leuandarum, si præfatus F. G. ad eandem proximam gaole deliberationem personaliter non comparebit coram Iusticiarijs dictæ domine Regine ad dictam Gaolam deliberandam assignatis, ad standum recto de Felonia prædicta, & ad respondendum dictæ domine Regine tunc & ibidem de & super omnibus quæ illi obycientur. Datum sub sigillis nostris, die & anno supradictis.

The Liberate.

ROBERT BING and W. L. two of the Iustices of &c. To the keeper of her Maiesties gaole in *Maidstone*, &c. greeting; Forasmuch as F. G. & c. Labourer, hath before vs found sufficient mainprise to appeare before the Iustices of Gaole deliuerie at the next generall Gaole deliuerie to be holden in the sayd Countie, there to answer to such things as shall bee then on the behalfe of our sayd

Soue-

Soueraigne Ladie obiected agaynst him, and namely to the felonious taking of two sheepe (for the suspicion whereof hee was taken, and committed to your sayd Gaole) wee commaund you on the behalfe of our said Soueraigne Lady, that (if the said F. G. do remaine in your sayd Gaole for the sayd cause, and for none other) then you forbear to grieue or detayne him any longer, but that you deliuer him thence, and suffer him to go at large, and that vpon the paine that will fall thereon. Ye ouen at *Ightham* aforesayd, vnder our Seales, this twentieth day of Iuly, &c.

The authoritie of some two Iustices of the Peace goeth yet further: for, the common manner is, that two Iustices of the Peace (the one of them being of the *Quorum*) doe ioyne in granting suertie for the good abearing: whereof I haue already spoken my mind, in the second booke of this labour.

Two Iustices of the Peace also (the one being of the *Quorum*) may prohibite and remooue common Ale-selling, and may also allow the same, taking bond with suertie by Recognisance for good rule to be kept in such alehouse, &c. by their discretion. And they may also commit & imprison (for 3. dayes) those that keepe common ale-selling of their own heds, against

The good
Abearing.

Alchouses.

against prohibition, or without allowance thereof, and may after take Recognisance of them with two suerties that they shall keepe none. 5.Ed.6.cap.25.

And here, seeing that the order of the conditions of these bondes is partly referred to discretion, I will (for the better brideling of these nurseries of naughtinesse) leaue with you that fourme of the first of them, which I haue knowen practised by that honourable Iusticer, the lord William Cobham, lord Warden of the Fiue Ports, and one of her maiesties priuie Counsell.

THE Condition of this Recognisance is such: whereas the withinbounden *A. B.* is admitted and allowed by the withinnamed Lorde *Cobham*, and *I. L.* (two of the Queenes Maiesties Iustices of the Peace within the Countie of *Kent* within written) to keepe a common Alehouse, or Tipling house, and to vse common selling of Ale, or Beere, onelie within the nowe house of him the saide *A. B.* (and not elsewhere) scituate in the *Highstreete* of the Towne of *M.* within written, and called the signe of the Hart: If therefore, hee the saide *A. B.* during such time as hee shall keepe such common Alehouse there, shall not suffer any vnlawful play, at the Tables, Dice, Cardes, Tennise, Bowles,

For, euery
place is not
meete.

Bowles, Closh, Coites, Loggets, or other vnlawfull Games to be vsed in his sayd house, or in his gardē, orchard, or other his ground, or place: Nor dresse, or cause, or suffer, to be dressed, any flesh to bee eaten vpon any day forbidden by the lawes or Statutes of this Realme of England: Nor wittingly & willingly admit, or receiue into his sayd house, or any part thereof, any person notoriously defamed of, or for theft, incontinencie, or drunkenesse, or that shall bee before hand notified to him the sayd A. B. by the Constable or Borsholder of M. afore sayd, for the time being, or by the Deputie of either of them, to be an vnmeete person to bee receiued into a common Alehouse: Nor keepe, or lodge there, any straunge person (aboue the space of one day & one night together) without notice thereof first giue to the Constable or Borsholder, or the Deputie of the one of them, there: And finally, if he the said A. B. during all the time that he shall keepe common selling of Ale or Beere in the sayd house, shall and will there vse and maintaine good order and rule: then this present Recognisance, &c. or else, &c.

Two Iustices of the Peace (so that the one Weights and be of the *Quorum*) may (by examination, or measures, Enquirie) heare and determine the faults of
Aa. i, head

head Officers in Cities, Boroughs, and market Townes, that doe not twise yearely view and examine Weightes and Measures, and breake and burne the defectiue: as also the defaults of buiers and sellers by other weightes and measures then they ought to do, and may breake and burne the defectiue weightes and measures, and amerce and fine the offenders by their discretion, and make processe against them, as if they were endited of Trespasse against the Peace, 11.H.7.cap.4: & 12.H.7. cap.5.

Pedlers, Tinkers, Fencers, Players, &c.

Two such Iustices, may giue licence to Fencers, Bearewards, Common players in Enterludes, Minstrels, Iuglers, Pedlers, Tinkers, and Petie-chapmen, to goe abroad, so as they shall not be taken as Rogues, 14.Eliz.c.5. & 27.Eliz.ca.11.

Poore.

Sute may bee commenced against a high Constable in the name of two of the next Iustices of the Peace to the place (if it be out of Citie, Borough, and Towne Corporate,) for not suing a negligent Collector of the money for the poore within the time limited by the statute: and they shall euery halfe yeere take the account of such Collector, and may take order with the Surplusage of such collection, and may also commit him to prison, for refusing to account, or to bring in his surplusage contrary to the statute, 14.Eliz.cap.5. & 27. Eliz.

Eliz. cap. 11.

Two Iustices of the Peace (the one being Oath of Vnder-shirife.
of the *Quorum*) may take the oath of the Vnder-shirife of their Countie (before that hee meddle with the exercise of that office) as well touching the Supremacie declared in the Act, 1. Eliz. as touching his office, set forth 27. Eliz. cap. 12. And the like may they doe, for the like oaths of Bailifes of Franchises, Deputies and Clarkes of Shirifes, and Under-shirifes, and of euery other person that shall take vpon him to entermeddle with the returning of Iurors, or with the execution of Processe in any Court of Record, 27. Eliz. cap. 12.

Two Iustices of the Peace (the one being Poore.
of the *Quorum*) may imprison such as doe refuse to giue towards the reliefe of the poore, or do discourage others to giue. And the Bishop, or his Chancellor, shall call the two Iustices of the Peace next inhabiting to any Hospital, Hospital.
to assist them in taking the account of such as haue had the collection of the reuenues and profits of such Hospital: and they three may charge the accountant (vnder penaltie to lose such summe of mony as they shal think meet) to account, and not to delay it, and forthwith to employ the Surplusage to the vse of the Hospital, 14. Eliz. ca. 5. & 27. Eliz. ca. 11.

Two Iustices of Peace (the one being of the *Quorum*) in, or next to the limites where
Aa. ii. the

Bastard child. the parish church is, in which a Bastard child (left to the charge of the Parish) shal be bozne, ought to take order by their discretion, as well for the reliefe of the parish, and keeping of the child, as also for the punishment of the mother, and reputed father thereof, 18. Eliz. cap. 3.

Tithes.

Two Iustices of Peace (the one being of the *Quorum*) vpon complaint by any competent Iudge of Tithes, for any misdemeanour of the defendand in a sute of tithes, may cause him to be attached, or committed to ward, till he find suertie vnto them by Recognisance to the Kings vse, to obey the Processe and Sentence of that Iudge, 27. H. 8. cap. 20. & 27. Eliz. cap. 11.

And also vpon complaint in wryting by an Ecclesiasticall Iudge that hath giuen definitive sentence in case of Tithes agaynst one (which wilfully refuseeth to pay the Tithes, or summes of money so adiudged) two such Iustices may cause the partie to bee attached, and committed to the next Gaole, till he find such suertie as is aforesayd to perfourme that sentence. 32. H. 8. cap. 7.

Assesse the
townes.

After execution had for the partie robbed against the men of the Hundred, and vpon complaint made by them so charged, two Iustices of the Peace (one being of the *Quorum*) of the same countie, inhabiting within the said Hundred, or neere vnto it where any such execution

cution shall be had, may asseſſe and tare; ratably and proportionably by their discretions, all and euery the towneſ, pariſhes, villages, and hamlets, as well of the ſayd Hundred, as of the Liberties within the ſame, towards an equall contribution to be had for the reliefe of them againſt whom ſuch execution was had.

27. Eliz. Reg. cap. 13.

Two Juſtices of the Peace (the one being of the *Quorum*) which were preſent at the Sessions wherein any conuiction was had of the offences againſt the ſtatute 27. Eliz. made for the amendment of the high wayes in the Wealdes of *Suſſex, Surrey* and *Kent*, may make warraunt for leuying the forfeitures thereof by diſtreſſe, to bee taken by the Conſtables, Tithingmen, or other officers therein to be aſſigned. And in default of ſuch diſtreſſe, or vpon reſuſall to pay ſuch forfeiture, after a lawfull demaund of the officer, they may alſo giue order for leuying the double of that forfeiture, by ſuch waies and meanes as to them ſhall be thought moſt meete. 27. Elizab. Reg. cap. 19.

Highwayes, in the Weald.

Two Juſtices of Peace, dwelling next any Citie or Towne, where any Retailer of woollen cloth ſhall preſent vnto them any defective cloth againſt this ſtatute (being conferred with the ſtatute 4. & 5. Phil. & Mar. ca. 5.) ſhall cauſe the ſame to be cut into three e-

Cloth.

quall partes, whereof the one to bee to the Queene, the other to the Presentours, and the thirde to the Iustices themselves, 5. Edwar. 6. cap. 6.

Fisherman,

No Fisherman shall be taken to serue as a Mariner by the Queenes Commission, but by the choise of two Iustices of the Peace adioyning to the place where he is to be taken, 5. Eliz. cap. 5.

Diuide the fourth part of a wood.

Two Iustices of the Peace (not being of kinned, alliance, counsell, or fee, to the Lord (or owner) of a wood appointed by the more part of the Iustices of Peace at their Sessions, vpon complaint of the Lord made vnto them, may diuide and set out the fourth part of it, if the Lord and commoners thereof (being first called before them) cannot agree vpon it, 35. H. 8. ca. 17: & 13. El. cap. 25.

Amercemēts in the countie Court.

Two Iustices of the Peace, wherof the one to be of the *Quorum*, (appointed by the *Custos Rotulorum*, or by the Eldest of the *Quorum* in his absence) are to ouersee, and controll, the Shirifes bookes and ameracements, and the exstrets of the said ameracements are to be made by Indenture betweene them and the Shirife or vndershirife, and to bee sealed with their seales: And they may vpon suggestion make procelle as in an action of Trespasse against the offenders of the statute to answere before them, 11. H. 7. ca. 15.

And

And here also, is place for those private
Acts, wherein any power is gi-
uen to two Iustices of the
Peace, as :

5.E.6.cap.24. For the making of Couer- Norwich.
lets and Dornikes, in *Norwich*.

35.H.8.ca.11. For wages of the Knights Wales.
of *Parliament*.

11.H.7.cap.9. For recognisances to be Northum-
taken of Lessees in *Northumberland*. berland.

2.& 3.Phil.& Mar.cap.15 : & 13.Elizab. Vniuersities.
cap.21 : & 27.Eliz.cap.11. For prohibition
of purueiances, within flue miles of either of
the Vniuersities.

14.Hen.8.cap.6 : & 26.Hen.8.cap.7. For Kent, and
laying out new high wayes in Kent and Sus- Suffex.
sex.

23.Eliz.cap.11. For the repairing of Car- Cardiffe.
diffe bridge.

What things, three, or moe,
Iustices of the Peace may do,
out of the *Sessions*.

CAP. III.

The authoritie as well of any two Iustices of the Peace generally, as of some certaine two Iustices specially, being thus at some length unfolded, it remaineth, that (for an ende) we speake somewhat of three, and the greater number.

Vnlawfull
Assemblee.

Three Iustices of the Peace (one of them being of the *Quorum*) may discharge out of prison, any person committed thither for his offence in not declaring to a Iustice (within 24. houres) that he was mooued to ioyne in any vnlawfull Assemblee contrary to the statute, 1. Mar. 1. Parl. cap. 12: & 1. Eliz. ca. 17.

Certific for
an apprentice.

It is requisite, that the Certificate (that is to bee made to the head Officer of a Citie or Towne Corporeate, where a child is to be put Apprentice to a Marchant, Mercer, Draper, Goldsmith, Ironmonger, Imbroderer, or Clothier, that the father or mother of such child may dispend fortie shillings freehold by yeare) be vnder the hands and seales of three Iustices of the Peace where the lands lie. 5. Eliz. cap. 4.

Rogues.

Three Iustices of the Peace (the one of them being

being of the *Quorum*) may with the Surplussage of the collections and forfeitures, by their discretions settle the Rogues (borne, or abiding for the most part of three yeres, in that Shire) to worke, there to be holden to worke by ouerseers, 14. Eliz. cap. 5. & 27. Eliz. cap. 11.

Money giuen to the poore, high wayes, or bridges.

The Bishop and his Chancellor, and three such Iustices of the Peace haue power to examine, how money or other reliefe (appointed by King Henry the eight, or any other, to the vse of the Poore, or of amending of Highways, or Bridges) is bestowed, and to call to account the detainers thereof, &c. 14. Eliz. ca. 5. & 27. Eliz. cap. 11.

It seemeth, that three such Iustices of the Peace may out of the Sessions take information and accusation by the oaths of two honest persons, against such as shall depaue the Sacrament of the body & blood of our Lord and Sauour Iesus Christ, against the statute: and examine the, what other witnesses were then by: and to bind them all by Recognisance, to giue in euidence at the day of triall, 1. E. 6. c. 1. but enquire of this matter.

Depraue the Sacrament of the Lords Supper.

Four Iustices of the Peace (whereof one to be of the *Quorum*) may (where a decayed Bridge is, & where it cannot be prooued who, or what lands, be chargeable to the repairing thereof) take the inhabitants, make collectors, and appoint ouerseers, for the amendment of the

Four Iustices Bridges.

the same, &c. 22. H. 8. ca. 5.

Six Iustices.
Gaole.

Six Iustices of the Peace, may in sundrie shires take order for common Gaoles, where of the Shirife shall haue the custody, and to the which murderers and felons, &c. shall be sent: and may doe and perfourme diuers incidents thereto by the statutes, 23. H. 8. ca. 2. & 13. Eliz. ca. 25.

Sewers.

Six Iustices of the Peace (two of them being of the *Quorum*) may for a whole yeare after the expiration of any Commission of Sewers, execute the lawes of the Commissioners of Sewers, vntil that a new Commission of Sewers be published within the yeare, 13. E. cap. 9.

To this Title also, do these particular Statutes belong.

Algate.

13. El. c. 23 : & 23. El. cap. 12. For pauing the streete by *Algate*.

Wales.

34. H. 8. cap. For establishing *Iustices* of the Peace in Wales, &c.

Cheshire.

27. H. 8. ca. 5. For *Iustices* of the Peace in *Cheshire*, &c.

Gaoles.

23. H. 8. c. 2 : & 5. El. c. 24 : & 13. El. c. 25. For the appointing and building of Gaoles, in sundry shires.

Oxford.

18. Eliz. cap. 20. For amending of Bridges within five miles of *Oxford*.

Shepey.

18. El. c. 10. & 27. El. c. 26. For the reparation of the Ferry, called the Kings Ferry in the Isle of *Shepey* in *Kent*.

27. El. c. 22. for *Chichester* hauen.

Of the reward, and punishment,
of *Iustices* of the Peace, for
things done, not done, or mis-
done, out of the Sessions
of the Peace.

CAP. IIII.

Of Reward, and Punishment (as
sayd Solon) all Common weales
do consist: for as the care of equitie
and Iustice wareth colde, unlesse
there be Reward readie for Vertue: So the
negligence of euill men must needes bee cor-
rected by seueritie and chastisement of paines.
And therefore, albeit the meaning of our Par-
liaments hath alwayes bene, that choise should
be made of such persons for this Office of the
Peace, as needed no reward for their trauell
in that behalfe: yet, to the end that they should
with the more alacritie and cheerfulnesse pro-
ceed in their affaires, the lawes doe now and
then cast them a trifle, rather to let them know
that they doe behold their well doing, then
that themselues do stand in need of any recom-
pence. Reward.

Whereupon, every Iustice of Peace, (sitting Seruants,
in execution of the statute of Labourers & ser-
uants) shall haue v. s. the day (for three dayes
together) out of the forfeitures that grow by
the same statute, 5. Eliz. ca. 4.

And

Ouerseers.
Cloth.

And if any Person (commanded by two Iustices of Peace, to appeare to bee made an ouerseer to see the Statute of Cloth making kept) doe without reasonable excuse refuse to come, and to take vpon him that office, he is to forfeit for euery such refusall fortie shillings: and thereof those Iustices are appointed to haue the one halfe by the Statute, 3. Edw. 6. cap. 2.

Faulry Cloth.

Those two Iustices of the Peace also next adioyning, to whome any Cloth (faultie against the statutes) shall bee presented, may cut the same into three equall pieces, and shall haue to themselves the one of the same, by the Act, 5. Edw. 6. cap. 6: & 4. & 5. Phil. & Mar. cap. 5.

Egyptians.

And euery Iustice of the Peace is allowed to retaine to his owne vse, the one moitie of all straungers goods, calling themselves Egyptians, that he shall lawfully seise, by vertue of the statute, 22. H. 8. ca. 10.

Inrolment of
bargaine and
sale.

The Iustice or Iustices of the Peace, that doe ioyne with the Clarke of the Peace, in taking the Conusance of an Indenture of bargain and sale of land to be Inrolled, shall haue xii. d. therefore, if the land exceed not in value xl. s. by the yeare, and ii. s. vi. d. if it doe exceed that value; by the statute, 27. H. 8. c. 16.

Riot.

The Queenes highnesse shall beare the costs that the Iustices of Peace shall sustaine
in

in the execution of the statute, 13.H.4.c.7. of Riots, &c. 2.H.5.ca.8.

And the Iustices of the Peace shal make execution of the statute of Forcible Entries at the costs and charges of the partie griued, 8. H.6.cap.9. Forcible entries.

Twelue pence is giuen to the two Iustices of Peace for taking euery Recognisaunce of him that is allowed to keepe a common Alehouse, by the statute, 5.E.6.cap.25. Alehouse.

On the other side also, the statutes do now and then correct the dulnesse of these Iustices, with some strokes of the rod, or spurre. And therefore generally, if a Iustice of Peace will not giue remedy to a partie griued in any thing that he may heare, determine, or execute: then vpon complaint to the Iustices of Assise, or to the lord Chauncellor, he shall not onely be put out of the commission, by the lord Chauncellor, but shall also be punished according to his demerites: 4.H.7.cap.12: And particularly, euen at the first it was ordained, that if the Wardens of the Peace did not look into the execution of the statute against such as should ride or go armed in any place, putting the Countrey in feare, then the Iustices assigned by the King, should enquire of their default, and punish them, Stat.North.2.Ed.3. cap.3. Punishment. Ride armed.

The statute of Riots &c. (13.H.4.cap.7.) Riots, laithly

laieth 100.li. forfeiture vpon those Iustices of Peace that shall dwel nighest to the Riot, &c. if they do not put that statute in execution.

Certificat.

And those Iustices of the Peace, and Shirife, or Vndershirife, which in sending their Certificate to the Queene and her Counsell, (concerning such a Riot) doe not withall Certifie the names of the maintainers and embracers in that behalfe, with their misdemeanors that they know, shall euery of them forfait twentie pounds, vnlesse they haue reasonable excuse for not certifying the same. 19.H.7.ca.13.

Egyptians.

That Iustice of the Peace which seisseth the goods of any Egyptians, and doth not incontinently restore such part thereof as shall be prooued before him, to haue bene craftily or feloniously taken, shall forfait the double thereof to such proouer. 22.H.8.ca.10.

**Rebellious
assemblie.**

That Iustice of Peace which doth not (after request thereof made) giue attendance vpon the Queenes Lieutenant of the Shire, for the suppression of any Rebellion, or vnlawful assemblie, shall suffer a yeares imprisonment, vnlesse there be cause of reasonable excuse. 11.Mar.Parl.1.cap.12: & 1.Eli.cap.17.

Poore.

If any Iustice of Peace shall be prooued to be in default about the execution of the Act of the Poore, by two sufficient witnesses before the Iustices of Assise, at their next generall Gaole deliuerie, he shall loose v.li. 14.El.ca.5.

That

That next Iustice of Peace which faileth in Gunnes and
presenting the name of him that presenteth it Crossebowes,
to him, according to the statute of shooting in
Crossebowes, or Gunnes, shall forfeit xx. s. 2.
E. 6. c. 14. But enquire of the continuance of
this, as before in the 7. Chap. of the 2. Booke.

That Iustice of Peace, which doeth not
(within fourteene dayes, after matter bettered
to him concerning any *Agnus Dei*, &c.) signi- *Agnus Dei.*
fie the same to some one of the Queenes priuy
Counsell, shall incurre the paines of the Act,
16. R. 2. of *Premunire*: 13. El. c. 2. And that Iu-
stice of the Peace, which after discouerie made
unto him by any person, that any Iesuite, Se-
minarie, or whatsoever other ecclesiasticall or
religious person (professed by any authoritie
from the See of Rome) is abiding within any
the Queens dominions, shall not within 28. daies
then next folowing, giue information therof to
some of the Queens priuy counsell, or to one of
the Presidents, in Wales, or in the North, shall
forfeit for euery such offence, 200. marks, 27.
El. c. 2.

That Iustice of the P. which (hauing taken Certifie into
any examinatio concerning Plaints in the Shi- the Esche-
rifs Court) doth not certifie the same into the quer.
Eschequer within one quarter of a yere after,
shall loose 40. s. for his default, 11. H. 7. c. 15.

Those Iustices of the Peace, which do grant Baile and cer-
tifie.
any baile contrary to the law, or do not certifie
the

the Baile and examination of the Felonie, according to these statutes, shall pay such Fine, as the Iustice of Gaole deliuerie shall thinke meete, 1. & 2. Phil. & Mar. cap. 13 : & 2. & 3. Phil. & Mar. cap. 10.

Phisition.

Euery Iustice of Peace, that (dwelling within seven miles of *London*) doth not (vpon request) assist the Colledge of Phisitions of *London* in the execution of the statute, 3 2.H.8. cap. 8. shall be punished, as one that runneth in contempt of the Queene, 1. Mar. ca. 9.

Not twentie
pounds in
lands.

And how that Iustice of the Peace shall be punished, that shall take vpon him the office, not hauing yearely twentie pounds in lands, it hath appeared already, cap. 6. in the first Booke.

The Epilogue.

The Epilogue.

THvs much (so shortly as I coulde) I thought fit to say, concerning the autoritie of *Iustices* of the Peace, without the *Sessions*: wherein I haue rather sought to admonish them (by a sleight view and rehearfall of the most part) what things they haue to handle, then laboured to accomplish them (with full skill) howe to administer, and execute them all.

Neither doeth that skill and knowledge lie in my power, but in their owne diligence:
and

and must therefore be wonne by a continuall study and painefull meditation of the Statutes at large: towards their helpe and furtherance wherein, I haue entreated a godly and learned Gentleman (Master *John Tindall*, a friend of mine in *Lincolnes Inne*) to take the paynes to cull out all those Statutes by themselues, which are now in force, and wherewithall *Iustices* of the Peace haue to meddle: not altogether beheading them of their preambles: Nor any whit curtailing them of their wordes: Nor otherwise dismembring them, or scattering their parts in funder: But laying foorth the bodies of them, whole, and at large, vnder their proper *Titles*: together with the materiall parts of their preambles: and not without any of their prouisoos: Therewithall amending the corruptions of the English translation out of the Latine and French: and finally adding vnto them (where need is) some notes of helpefull direction: which things no other man (that I knowe) hath hitherto assayed. All which is so marked out in Master *Rastals* Abridgement, as euery man (that will) may easily enioy the benefit. And I doubt not, but that for the absolute accomplishment of so seruiceable a worke, God will giue him both time and meanes, to conferre and certifie the whole volume of those im-

printed Lawes, according to the Originall
and Autentique Records: then the which I
know not any labour, either more auail-
able to the Students of the Lawe, or
more necessarie for such as haue a-
ny charge thereof in the ad-
ministration of the com-
mon-wealth.



THE FOVRTH
BOOKE, INTREA-
ting of the *Sessions* of the Peate,
and of things incident or be-
longing thereunto.

THE PROHEME.

IT may peraduen-
ture seeme, that ha-
uing already stooode
long in matters that
were of the lesse im-
portance, and such as
might be dispatched
at home *sine strepitu*, I
will be now both long & tedious, when I be-
gin with those of greater weight, and which
doe require the solemne *Bench*.

But, as at the first I thought it meete to
helpe most, where most need was: I meane,
where one or two *Iustices* (pressed with the
necessitie of time, and destitute of the assi-
staunce of their learned companions) were
to administer their office at home: So now,
knowing that at the *Sessions* of the Peace,
there be commonly many *Iustices* in number,
and amongst them sundry so well instructed
in law, as in being too busie with that which

B b. ij.

be-

belongeth thereto, I shall as the saying is,
but *set a Candle in the Sunne-shine*, and rather
bewray want in my selfe, then bring helpe
or light vnto them, I purpose to runne ouer
this residue more swiftly, except it be in a
few places, where either the profite or
necessitie, (or both) of the matters
themselues shall beg licence,
and procure pardon
for me.

THE DESCRIPTION
OF THE SESSIONS
of the Peace.

CAP. I.



Sa man that
hath receiued hurt
in his bodie by a
stroke, whereof hee
bleedeth freshly, wil
be contented for the
present to admit the
helpe of any meane
Leech, or Surgeon

(comming next to hand) for the staunching of
his blood, and binding vp of the wound, and
yet would moze gladly haue vsed the confe-
rence of diuers expert Surgeons for doing the
same, if the daunger of the hurt would haue
graunted the time that will be lost in calling
them togither: So also the common counsell
of this Realme, finding that the body thereof
may be deeply wounded in some one mem-
ber, and perceiuing that certaine euils must be
resisted at the very first, (least otherwise they
grow past helpe, and ware incurable) hath
many times thought it good to commit to
one, or to a few Iustices of the Peace (for that

B b. iii.

they

they be ready, and at hand) the stopping of the blood (as it were) & first dressing of the wound, by repressing of force, and other outrages, that do suddenly arise : and hath yet neuerthelessse (when as the time and matter will permit) politikely established an assembly, and conference of all the Iustices at certaine times in a full court, and open Session.

For it is true, that if the publique Peace should not be preserved by taking of Suertie, before it be broken : If such as do violate the common tranquillitie should not be committed to prison, when they haue broken it : If seditious tale-bearers (the sowers of Rebellion) should not be snapt vp and restrained : If finally riotous assemblies should not bee dispersed, and Forcible inuasions withstood and remooued: the hurt body would bleed to death, and too late (and all in vaine) would it bee to summon a Session for remedie. But when the bridle is once cast vpon the head of the Offender, then, and not before, is the matter readie for the Sitter.

And great and many are the profits, that would ensue of these Sittings, if they were more often kept, and duely gouerned.

The description of a Session of the Peace.

I will (for this time) call a *Session of the Peace* An assemblie, of any two (or moe) Iustices of the Peace (one of them being of the *Quorum*) at a certaine day (and place within the

the limits of their Commission) appointed, to enquire by a Iurie (or otherwise to take knowledge) and thereupon to proceede to heare & determine according to their power, of causes within their Commission, & the Statutes referred to their charge.

And this description excludeth all meetings, that are onely for Enquire: in so much as to enquire, and not to heare and determine, is but a halfe doing, and not worthy the name of a Session of the Peace.

It shutteth out also such assemblies as doe consist of two Iustices of the Peace, meeting onely to enquire, heare, and determine of a Riot, by vertue of the Statute, 13. H. 4.

For, that may they doe (as also the former) though neither of them be of the *Quorum*. So that it is but a particular seruice, laied vpon two Iustices and the Shirife by this Statute: the Record whereof shal not (as I thinke and haue said already) remaine amongst the Records of the Sessions of the Peace.

And therefore, the assemblie that I meane, is a meeting of such Iustices for the execution of their generall authoritie.

And albeit that happily some one matter be the motiue and chiefe cause of their coming together: yet if they deale with that and others (within their Commission and charge) let it (on Gods name) passe for a Session of

the Peace, according to my meaning.

The Sessions of the Peace then, be grounded, chiefly vpon the wordes of the third *Assignamus* in the Commission: the which (being, *duos vestrum, quorum aliquem, &c.*) do very necessarily require the presence of one of the *Quorum*: for the wordes of the second *Assignamus*, do giue no power to heare and determine, but onely to make enquirie.

A partition of
all that which
followeth in
this booke.

And these three things, namely, to Enquire, Heare and Determine, do (in effect) comprehend whatsoeuer belongeth to the Sessions: So that euery thing whereof I shall heereafter intreat, will concerne, either the Information of the Iustices, by enquirie, and other meete meane: Or the Hearing and triall of the cause it selfe: Or the Iudgement and execution (which is the Determining) giuen and done vpon it. And therefore, in this path (G O D wil-
ling) will I tread, and
by it you shal trace
mee to the
end.

Who shall appoint the Sessions

of the Peace, and how :
and where.

CAP. II.

The Iustices of the Peace, doe (at Knowledge of
their Sessions) take knowledge of causes at the
causes within their Iurisdiction, either Sessions.
ther by the Oath of Inquirours, or
by the presentment or declaration of other
men: And this Inquirie is first prepared, by Preparation
the apparance of the Officers and Countrie, for Inquirie.
and by the Articles giuen in charge: and then
performed, by the presentment (or inditement)
of them that had the charge to make it.

Now, albe it that these Sessions be common-
ly, and most orderly, summoned by a Precept
in witting: yet is it not altogether of necessi-
tie (for the making of a lawfull Session) to
haue it so. For, if competent Iustices of the
Peace do get men to serue, and thereupon doe
hold a Session (without any Precept before
directed) all presentments made before them
by twelue lawfull men, shall be of force in
law: but no man shall loose any thing for his
default of appearance there, because no man
had notice of their Sitting. Mar.

Neuerthelesse, because the maner is, to call
the Officers and Countie together for this ser-
uice,

uice, by a Precept to the Shirife, wherein both the disposition of the Iustices is notified for the holding of a Session, and the seruice and attendance of those others is commaunded to bee thereat with them (which also they be well warranted to direct vnto him, by the last *Assignamus* of their Commission, and by the *Mandamus* that followeth thereupon) I will lay down the Forme thereof, which hath bene like to this:

Precept, to
summon the
Sessions of
the Peace.

HENRICVS COBHAM miles, & THOMAS RANDOLPH Armiger, duo Iusticiar. dom. Reg. ad pacē in comitatu Kancia conseruandam, nec non ad diuersa felonias, transgressiones, & alia malefacta in dicto comitatu perpetrata, audiendum & terminandum assignatorum, vicecomiti eiusdem comitatus, Salutem: Ex parte dictae dom. Reg. tibi precipimus, quod non omittas propter aliquam libertatem in Balliuatua tua, quin eam ingrediaris, & venire facias coram nobis, vel socijs nostris Iusticiarijs pacis, &c. (tali die &c.) proxime futuro apud Maidstone in com. praedicto, tam 24. probos, & legales homines de quolibet Hundredo in Balliuatua tua, quam 24. milites & alios probos & legales homines de corpore comitatus tui (tam infra libertates, quam extra) quorum quilibet habeat 40. sol. redditus terrarum & tenementorum libere per annum ad minus: ad inquirendum tunc & ibidem

ibidem super hijs que ex parte dicta dom. Reg. eis iniungentur. Scire facias etiam omnibus Coronatoribus comitatus tui, Seneschallis, Constabularijs, Subconstabularijs, & Balliis libertatum, infra Hundreda & libertates predicta, quod sint tunc ibi ad faciendum & perimplendum ea que ratione officiorum suorum sunt facienda. Proclamari prater ea facias per totam Ballinam tuam, in locis idoneis predictam Sessionem pacis ad diem & locum predict. fore tenendam. Et tu ipse tunc sis ibidem, ad faciendum, & exercendum ea que ad officium tuum pertinent : & habeas ibi tunc, tam nomina Iuratorum, Coronatorum, Seneschallorum, Constabulariorum, Subconstabulariorum, & Balliuorum predict. quam hoc preceptum. Datum sub sigillis nostris apud Sutton at Hone, in com. predict. 16. die Augusti, Anno regni dicta dom. nostra Regina Eliz. Dei gratia, &c. 29.

This Precept may be made (as here it is) by any two Iustices of the Peace, so that one of them be of the *Quorum* : for two such may hold a Session of the Peace, as it doeth plainly appeare by the Commission : and therfore (as M. Marr. saith) it suffiseth not to haue it run vnder the name of the *Custos Rotulorum* alone, seeing that he hath no more authoritie in this behalfe, then one of his felowes hath : for the words of the said *Mandamus* in the Commission to the Shirife be,

Coram

The number
of the Iustices.

Coram vobis, seu aliquibus vestrum: venire faciat, tot, & tales, &c. Mea, if two such Iustices make a Precept for a Session of the Peace, all their fellow Iustices cannot discharge it by their *Superfedeas*: but a *Superfedeas* out of the Chancerie will discharge it, saith Fitzh.

And if one Iustice of the Peace alone will take vpon him to hold a Session of the Peace, (that was lawfully summoned by him and another such Iustice) and will make the Stile of the Session in the names of himselfe and the other, all presentments so takē before him may be auoided: But if the Sessions be in trueth holden by two sufficient Iustices only, and the Stile (or Title) thereof be made in the names of three, then all the presentments before them shall stand good. For it will not helpe the partie to say, that one of the three was not there, when it shal appeare that two of them (the one being of the *Quorum*) were present, which wil suffice, Marr.

The time.

Touching the time of holding the Sessions of the Peace, I will forbear to speake, till I shall come to diuide the Sessions.

The place.

But the place of holding them is arbitrabile, and at the pleasure of the Iustices themselves, so that it be meete for accesse. And although the Precept do appoint the Session to be holden in some one towne by name, yet may the Iustices keepe it in any other towne, and all

all the presentments shall be good that shall be taken where they hold it: But then againe, no amerceiament can be set vpon any man for his default of apparance there, because he had no warning of it, Marr.

So, if two Iustices make a Precept for a Session to be holden in one Towne, and two other Iustices make an other Precept for another Session to be holden at an other Towne (or in an other part of the same Towne) the same day: then the presentments taken before either of them shall be good, Marrow. And then also it seemeth, that he which serueth at the one Session (as a Juror, or Officer) shall be excused for his default at the other: because they both be the Queens Courts, and of equal authoritie.

What persons ought to appeare at these Sessions, and therein of the

Custos Rotulorum, the Records of the

Sessions, and the Clarke of the Peace:

and how the *Inyors* ought to

be qualified & ordred, &

of the priuiledge of

the Sessions.

CAP. III.



Or the better preparation towards this Enquirie, let vs peruse the persons, that are to attend and doe seruice

uice at the Sessions.

The Iustices.

The Iustices of the Peace be so necessarie, as without them (though all others should appere) no Session can be kept: and yet if any of them be absent, their fellow Iustices cannot amerce them, as the Iustices of Assise may do for their absence at the Gaole deliuerie: for, *Inter pares non est potestas*, and the authoritie of all the Iustices of the Peace at the Sessions is equall, so that like power hath he which is not of the *Quorum*, with him that is, except it be in speciall cases set forth in the Commission and Statutes. And therefore, it was holden (3.H.7.Fitzh.Tit. *Iustice del Peace* 3.) that if one which is not of the *Quorum*, will be so bold as to rebuke one that is of the *Quorum*, he and his companions may not commit him to prison for it.

And albeit the power of these Iustices be ioint at the Sessions, yet (to some purpose) each one hath a distinct power by himselfe also. For, if one of them (sitting in this Iudicial place) shall see a Riot, he may cause the parties to be arrested, and may also record the Riot, whereby they shall be so concluded, as they shall haue none answer to it. Fitzh. Titul. *Iust. del Peace*. 9.

The Recognosors.

The Recognosors that stand bound to the keeping of the Peace, and to appere at the Sessions, and such like, be commonly tied to the

the Quarter Sessions, whereunto I am not yet come: And those prisoners that are sent by The Prisoners, Justices of the Peace for felonie or manslaughter, or suspicion thereof, or be let to Baile or Mainprise vpon any such offence, be (for the most part) reserued till the Gaole deliuerie, wherewith I haue not to do: The rest of that kind, & the Rogues &c. may be brought forth at euery Sessions of the Peace.

But two sorts of men there are, that owe their Ordinarie attendance at these Sessions, that is to say, the Officers (or Ministers) of the Court, and the Iurors of the Countrie.

Amongst the Officers, the *Custos Rotulorum* hath worthily the first place, both for that he is alwayes a Justice of the *Quorum* in the Commission, and amongst them of the *Quorum*, a man (for the most part) especially picked out for wisdom, countenance, and credit: And yet in this behalfe he beareth the person of an Officer, and ought to attend: for the wordes in the Commission be to him now by his proper name, *Quod ad dies & loca predicta, breuia, precepta, processus, & indictamenta predicta coram vobis & dictis socijs vestris venire faciatis.*

The *Custos Rotulorum*.

Whereas, vntill the 14. yeare of king Richard the 2. that charge was generall to all Justices, and not laid specially vpon any one person in the commission: as it doeth appeare
in

in the Tower, Record. patent. parte i. membrana 25. de Anno 13. R. 2 : & membrana. 35. de Anno 14. R. 2.

Who shall
keepe the
Commission
of the Peace.

And (as his very name sheweth) he hath the custodie of the Rolles (or Records) of the Sessions of the Peace : and whether the custodie of the Commission of the Peace it selfe do pertaine to him alone, it hath bene made some question : For Mr. Marrow saith, that seeing the other Iustices may hold a Session without him, it is meet they should then haue the commission with them. But Chocke in the booke (9. E. 4. 2.) holdeth, that a Iustice of the Peace (in making any Iustification by vertue of his Office) needeth not to shew the Commission of the Peace : because (saith he) the keeping thereof belongeth to the *Custos Rotulorum* : and for the same cause also, the Bailife of a Iustice of the Peace shall not bee driuen to shew the Commission as it seemeth, 20. Hen. 7. 7. And truely, since it is such an other thing, as can remaine but in the handes of one at once, it seemeth most reasonable, that he which is put in trust with the rest of the Records, should be credited with the custodie of the Commission also.

The Records
of the Peace.

But vnder the name of the Records of the Sessions of the Peace, I doe not comprehend all manner of Records concerning the Peace : but those onely which ought to be at the Sessions

ons of the Peace: as Bills, Plaints, Informations, Indirements, Presentments, the Rolles of Proseses, Trials, Iudgements, and Executions, and all other the Acts of the Sessions of the Peace themselves: And furthermore, the Proclamations for the Rates of servants wages, all Recognisaunces of the Peace and good Abearing: Recognisances concerning Felonies, and Aleh. use keepers, and such like as ought to be certified (or brought) to the Sessions of the Peace, must be numbred amongst the Records of the Sessions of the Peace: For of all these there may be vse at the Sessions, and therefore the *Custos Rotulorum*, or some for him, ought to be readie there to shew them.

And although it were before them at the libertie of a Iustice of the Peace, to certifie a Recognisance of the Peace to the *Custos Rotulorum*, (as you may see 2.H.7.1.) Yet now, by the Statute (3.H.7.cap.1.) he ought to certifie, send, or bring it to the next Sessions of the Peace, that the partie may be called, and to the end also, that his default (if he make any) may be recorded: and by such record of his default, he is concluded to say, that he appeared there, 13.E.4.

As for Precepts for Suertie of the Peace, speciall Records for convictions of Forcible entries, Riots, and such like, as be made out of the Sessions of the Peace by particular Iustices,

ces, and be to remaine with themselves, and not appointed to be certified thither, I cannot reckon them in the number of the Records of the Sessions of the Peace: no more then I may well do the Inrolments of bargains and sales, and such other Records lying in the charge of the *Custos Rotulorum*, or Clarke of the Peace.

But M. Brooke (Tit. Commission 11.) addeth, that the Records of the Iustices of the Gaole deliuerie do remaine amongst the Records of the Peace also. Wherebeit I thinke he meant it not of all the Records of the Gaole deliuerie. For, as the Iustices of Gaole deliuerie haue their proper Clarke, which maketh vp, and keepeth the Records of things determined by that Commission: so the same Iustices (being withall Iustices of Peace) doe leaue with the Clarke of the Peace, Indite-ments, and such causes of the Peace, as be not determined, but do hang in Process, to the end that offendours may be the more speedily Iusticed.

And it appeareth 13. Hen. 4. 10. that Hanford (Iustice of Gaole deliuerie) at his departure called the Clarke of the Peace, and willed him to take the name of a prisoner that had bene sent thither for Felonie, without any sufficient prooffe, and to cause it to be inquired of at the next Sessions of the Peace.

This

This *Custos Rotulorum* hath credite (by 27. H. 8. ca. 16) touching Inrolments: by 11. H. 7. ca. 15. to appoint two Iustices of the Peace that may controll the Shirifes bookes: and by 27. El. cap. 12. for taking the oath of the Vnder-shirife: and this office of the *Custos Rotulorum* was of auncient time giuen by the discretion of the Lord Chancellor, vntil that (about the latter end of the raigne of king Henry the eight) sundry persons (no lesse vnwoorthy to occupie the Office, then greedie to haue the place) did by their owne labour, and other mens friendship, obtaine at that Kings hands, grants of the same by his Letters patents, for terme of their liues: by meanes whereof, so many euils did shortly ensue, both to the hinderance of Iustice, and to the disherison of the Kings subiects, that the last Parliament of his raigne, (*viz.* 37. H. 8. cap. 1.) did somewhat restraine that course: for as it did ordaine, that none should thencefoorth be appointed *Custos Rotulorum* in any Shire (a few places of Priuiledge onely excepted) without a Bill signed with the Kings hand: So it tooke order also, that the same Bill assigned should be but as a Warrant to the Lord Chancellor, to assigne (in the Commissions of the Peace) the same person to be *Custos Rotulorum*, only vntill the King should (by an other Bill, signed with his hand) make appointment of an

The gift of the Office of the *Custos Rotulorum*.

Cc. ij. other

other person for the same place. But neither this ordinance had any long life: for within a few yeares after, it was thought so prejudicial to the power of the Lord Chancellor, and so troublesome a matter to sue to the King for bills so to be signed, that by the Parliament, (3.E.6.c.1.) the Lord Chancellor was wholly restored to his auncient authoritie in naming the *Custos Rotulorum* againe (except in such privileged places) without expecting any such bill: and that the *Custos* appointed by the discretion of the Lord Chancellour, should enioy the same Office, to be occupied by himselfe, or his sufficient Deputie, in as ample maner, as if that Statute (37.H.8.c.1) had neuer bene made.

Clarke of the
Peace.

The Clarke of the Peace oweth his attendance at these Sessions also. For (omitting that he hath speciall trust in the taking of Inrolments by 11.H.7.cap.15: and that he is in a sort, incorporate by that name of his office to sue vpon the Statute of Huy and Cry, 27. Eliz.cap.13: because those things haue no reference at all vnto the Sessions) he readeth the Inditements, and serueth the Court: he inrolleth the Acts of the Sessions, and draweth the Proceffe. He also must deliuer Letters to such as be acquitted of Felonie, and will beg for their fees, 22.H.8.cap.12. He must record the burning of Rogues thorow the eares: 18.El. cap.

cap. 3. and must likewise record the Proclamations of Rates for seruants wages, and inroll the discharge of Apprentices, 5. Eliz. cap. 4: He is appointed to keepe the counterpane of the Indenture of Armour, 4. & 5. Phil. & Mar. cap. 2. He keepeth the Register booke of licences given to Badgers & Laders of corne, 5. Eliz. cap. 12: and of those that are licenced to shoot in Gunnes, 2. Ed. 6. cap. 14: And he is bound (vnder the paine of xl.s.) to certifie in to the Kings Bench, transcripts of Indite-ments, Utlawries, Attainders and Conuictions, had before the Iustices of the Peace with in the time limited by the Statute, 34. H. 8. cap. 14.

All which things he cannot do, if he be not present: so that he is an officer to this Court, and is the Clarke of the Iustices, as the Statute 12. R. 2. cap. 10. nameth him, and not (as M. Marrow thought) the Clarke of the *Custos Rotulorum* ouely: You may read also (2. H. 7. 1.) that if a Recognisance of the Peace be brought in to the *Custos Rotulorum*, and the partie grieved will not sue forward, then the Clarke of the Peace (who is the Clarke and Attorney of the King, saith that booke) shall call vpon it for the Kings aduantage: and I am sure that the sayd Statute (37. H. 8. c. 1.) calleth his place an Office.

Howbeit, the nomination and appointment

Et, iii,

of

The nomination of the Clarke of the Peace.

of him hath long time belonged to the *Custos Rotulorum*: and he is to enioy his Office, so long as the *Custos Rotul.* keepeth his place: and may exercise it by himselfe, or by a Deputie sufficiently instructed in the Law, and admitted by the *Custos Rotulorum*.

And this Office was also (for a time) giuen by the Kings Letters Patents for terme of life, as that of the *Custos Rotulorum* was, vntil the sayd statute (37.H.8.cap.1.) recontinued the auncient order of giuing it by the *Custos Rotulorum* onely.

The Coroners.

Furthermore, the Coroners, as the common forme of the Precept sheweth, and the statute (27.H.8.cap.5.) presumeth, ought to be present at the Sessions: But yet, that is not for to certifie their Inquisitions, for that ought (by 1.& 2.Phil.& Mar.cap.12.) to be done at the generall Gaole deliuerie: nor yet to receiue any Approouer, for neither that belongeth to the Iustices of Peace, 9.H.4.1: but it is onely (saith M.Marr.) because the Coroners be parties to the Exigents, and be Iudges of the Vt-lawries: Nowbeit, they are (besides that) Cōseruators of the Peace, & may (in cases) commit men to prison, and therefore ought to be at the Sessions, to obiect against them.

The Shirife.

The Shirife also, ought to attend at these Sessions, for the double dutie that he beareth: the one, as Shirife to returne the Precept, to take

take the charge of prisoners, and to serue the court otherwise, as he hath in charge by the *Mandauimus* that is mentioned in the Commission to haue bene sent vnto him: the other, because he also hath Care of the Peace.

The Bailifes of Franchises, and the Constables of Hundreds are to serue here, the one as Ministers, and the other as Iurors, and therefore ought to giue their attendance.

Bailifes and
Constables.

And euery of these (except it be the *Custos Rotulorum*, for thereof I doubt) may without controuersie be amerced, if they make default.

But the Ordinarie oweth not his attendance at any Sessions of the Peace, as he doth at euery Gaole deliuerie, in the opinion of B. Marr. In deed he is not warned by the common Precept, and therefore cannot so conveniently take knowledge of the Sessions of the Peace. Howbeit, if he come, I thinke that he ought to serue, when he shall be called.

The Ordinarie.

But especially, there ought to appeare such Iurors for In-
Iurors, as be returned by the Shirife, and warned by his bailifes, whether it be for Enquie, or triall. And in this behalfe, both the commission, the common fourme of the Precept, and the Law it selfe (11. Hen. 4. cap. 9.) wil-
leth, that they should be, *Probi & legales homines*.

quie and
triall.

For, if any of them be discredited in Law, as by Attainder in Conspiracie, Attaint, de-

cies tantum, Subornation of Perjurie, Concealment, or such like, they be not *Probi*, and their presentment is void by it, unlesse there be twelue (besides them) that are not so blemished.

Againe, if they be outlawed, abiured, condemned in a Premunire, or attainted of treason, felonie, or such like: then be they not *Legales*, and their presentment is meere void also, as it may be gathered vpon the case, 11. H. 4. 41.

And women, infants vnder fourteene yerres of age, Aliens, and such as be within orders of the Ministerie or Clergie, cannot be empanelled amongst others.

Generally also, these Iurors ought, either to be inhabiting within the Shire, or els to haue lands there: for the Commission willeth, that they should be such, *Per quos res veritas melius sciri poterit*: which must needs be vnderstood of such, as haue cause to know the Countrie: And the precept is vsually according to the same forme, especially (in the Countie Palatine of Lancaster) each Iuror of enditement and triall, ought to haue to the yearely value of five pounds, by order of the Statutes, 7. H. 5. cap. 1: 18. H. 6. cap. 12. & 33. H. 6. cap. 2.

If any of these Iurours returned, be three score and ten yeares of age, or haue any continuall

maill infirmitie, or be otherwise decrepite, yet that shall not excuse him for not appearing, if the Iustices will exact his seruice : but he is giuen to his Action vpon the Statute (W.2. cap. 38.) against the Shirife for his returning of him, Marr.

And if he haue a Charter of Exemption, he ought to shew it to the Shirife : against whom (if he will notwithstanding empanell him) he may haue onely his Action vpon the Case, and none other remedy, 18.H.8.5. *Cur.* which may be truly said, as to the sauing of his issues : but (by some other bookes, and namely 42. Ass. Pl. 5. and Mar.) he is to be discharged vpon his apparance, and specially where he hath in his Charter of Exemptiō these words, *Licet tangat nos*, vnlesse it fall out that there want others that be sufficient to serue and furnish the number.

Now, though some of the Jurors of this Enquirie, be of affinitie (or consanguinitie) with any partie griued, that procureth the inditement : yet that hindreth not their presentment : howbeit it is no discretion, for the Iustices to suffer any such to be empanelled amongst them.

Our common maner in *Kent* (agreeing with the forme of the Precept) is to returne particular Iuries for the Hundreds, and one generall Iurie for the body of the Shire : this
last

Generall and
particular Iu-
ries.

last is made vp with vs (for the most part) of the Constables only: and those others (if they be not filled at the first) are woont to be renewed with the *Tales* from Sessions to Sessions. But that vsage is no small hinderance to the seruice (as many doe thinke) by reason that (those particular Iuries being selldome serued with full apparaunce) the whole Enquirie standeth onely vpon their labour that are empanelled for the body of the Shire, that is to say, vpon one man of each Hundred, or two (at the most) who cannot be thought to see so much as a whole Iurie of eies may and doth.

And therfore, they thinke, that it were good to make vp some of the particular Iuries also (when they be not full) *de circumstantibus* of other Hundreds: by which meane, either the whole Shire, or (at the least) a great many parts thereof, might be perused.

To this opinion M. Marrow seemeth to incline, saying, that in default of those which are returned, the Iustices may take a Iurie *de circumstantibus*: And hereunto also the Statute (3. H. 8. c. 12.) sheweth some further consent, in that it giueth power to the Iustices, by their discretion to commaund the Shirife, or his deputie, to adde, alter, or diminish the names of the pannell, which, if he refuse to doe, he shall forfeit xx. li. for his contempt.

Neither is it to be objected, that men (being

ing all of one Shire) may not take knowledge of things done in diuers Hundreds: Seeing, they haue diuers occasions of meeting together, as at the Countie Courts, the Shirifes turnes, the Assises, and general Quarter Sessions. And if a Iurie of one Hundred would make presentment of an offence done within any part of the Shire, (out of their owne Hundred) this were good in Law.

Besides which (if D. Marr. mixture be followed) few of them that do appeare, shal loose their labour, whereas now the most part of them do come in vaine.

But these men be not truly Iurors, till they be sworne, as their name pretendeth, and otherwise their presentment is vtterly void. And if it should (by any ouersight) happen, that they or some one of the, were not sworne at all: yet if the Record make mention, that they be sworne, their presentment is of force enough: for the Record may not be gaine said.

How they of the Iurie must be sworne and ordered.

And the Iustices may (vpon cause) remooue a Iuror, after he is sworne. 20. H. 6. 5: Againe, if (after the swearing of the Iurie) their seruice be put off till the next day, (vpon any urgent occasion) then may they bee sworne of new, as if they had not before appeared: 7. H. 4. 38.

Each Iurie of Enquirie ought to containe The number twelue in number at the least, and if there be of Iurors,

18, or more, it shall not be amisse: Vea the common order with vs is, to haue them of an odde number, as 17, 19, or 21: to the end (as it seemeth) that if they should dissent in opinion somewhat equally, yet there should be alwaies one to weigh downe the side, and cast the ballance. But if twelue of them doe agree, the gaine-saying of the residue cannot hinder the presentment. Vea, the lawe was (in the time of King Ethelred) that in a Iurie of 12, the agreement of 8, should preuaile, and make a good verdict, although for a long time together it hath bene, and yet is, otherwise vsed.

The Iustices ought not to commit these Iurours of enquire to any keeper: nor to keepe them without meat or drinke: nor to cary them out of the Towne: And yet they may adiourne them to another place, to giue their verdict; and that (saith Marr.) may be then taken by any two Iustices, though neither of them be of the *Quorum*.

Concealment

If these Iurors doe wilfully conceale offences (presentable, and that be complained of by Bill) then may the Iustices choose an Enquest of persons (whereof euery one may dispend xl.s. by yere) to enquire of their concealment: And if any such concealment be found within the yeere, euery one of the first Enquest shall be amerced in full Sessions, by the discretion of the same Iustices, 3.H.7.c.1.

And

And because the Iurors of those daies were yet wilfull in their concealments, it was provided within eight yeeres after, that the Iustices of Peace should determine causes, vpon information, without any such presentment. But, *In vitium ducit culpa fuga, si caret arte*, and therefore that ordinance endured not long, as you shall hereafter perceine.

Finally, these Iurors ought not to discouer their owne doings: for it is vsually a part of their Oath, that they shall keepe the Queens Counsell, and their fellowes. And we read in Fitzh. (Tit. Coron. 207. & 272.) that to indite a man of Felonie, and then to shew abroad to others what they haue done therein, hath bene taken for Felonie: Howbeit, that offence is now taken to be fineable onely.

And now, as all these owe their seruice at the Sessions, either by reason of their office, or by vertue of the Summons: So all others also may freely attend there, if not for any thing that specially concerneth themselves, yet for the aduancement of publique Iustice, and for the seruice of the Queene. And to this ende, they are invited thither (as I may say) by a certaine freedome of access, and by protection from common arrest: a thing, that is incident to each court of Record, and without the which, Iustice should be greatly hindered. So that, if a man come voluntarily to these Sessions,

Keepe counsell.

Priviledge of the Sessions.

ons, with the mind, either to preferre any bill of Enditement, or to giue information against an other: or to tender a fine vpon an Enditement, touching himselfe: or do come compelled to make apparaunce for the sauing of his bond, and be arrested by the Shirife vpon common and originall proesse, in his conning thither, or during his tarping there: it seemeth that (vpon examination of the matter vnder his oath) he shall be dismissed thereof by the priuiledge of this Court, euen as it is vsed in the higher Courts at *Westminster*; 1. Hen. 7. 12, &c.

Of the *Articles* that are to be
giuen in charge, at the *Sessions*
of the Peace.

CAP. IIII.

Twas the auncient maner, that
twise in the yeere at the Shiriffes
turne (which was sometime a court
of great authoritie, and called the
Shiremoote) the bishop of the diocesse, and
the Alderman (or Earle) of the Shire, should
be present: the one, to enforce the people in
the lawes of God: and the other, to instruct
them in the lawes of the land: *Archaionom,*
in legibus Canuti, Cap. 17.

And

And it were to be wished, that as there is commonly at euery Assises, a Sermon (uttered by some learned man) so also the like might be at each generall (or quarter) Sessions of the Peace. For, seeing that the lawes of men must be obeyed for God, it doeth of necessity ensue, that he which will seeke to haue man obeyed rightly, must first cause God to be preached truly.

The Iustices of the Peace (saith M. Fitz.) for their parts be bound to enforce the people: and (no doubt) the charge is giuen, as well to instruct those that be ignorant, least they offend vniwares, as to enquire of those that haue already fallen into daunger by offence: and thereof it is, that many Statutes doe expressly commaund, that they shall be openly read (or declared) at the Sessions, as you shall see in place for it.

But the manner of giuing the Charge, and receiuing the Verdite at this day, differeth from that which the Iustices in Eire, were wont to vse: for you may see, in M. Bracton (Fol. 116.) that first one of the Iustices did open before the whole assembly, the benefits of the seruice in hand: the commodities of keeping the Peace: and the evils of the contrary: and that then the Articles of the charge were read by one and one to the Iurors: who (receiuing the same at the hands of the Iustices) did also make

The auncient
order, of gi-
uing the
charge in
Eire.

make answer in the peelding by of their ver-
dite, to each Article severally, and by it selfe.

Which custome, as it had many profits: so
is it woorthy (in mine opinion) to be reconti-
nued, and brought in vze againe.

Neither ought the multitude of the Articles
(now inquirable) to discourage any man in
this behalf: For, if those lawes which be least
seruiceable (either for the present time, or for
the place, or other iust respect) were only tou-
ched or run ouer, by way of short Article: then
would there be the more time afforded, for
speech that might be well spent, as well in
discourse of exhortation, or dehortation, as in
the larger handling of such other Statutes,
wherof there is greater vse and necessitie.
And this libertie, the Iustices in *Eire* them-
selues did vse also, as the same *W. Bracton* in
the same place reporteth.

The points of
the charge di-
uided.

The points of the charge that wee haue in
hand, may be reduced to a few heads, and that
after sundry sorts of distribution: of which
(for examples sake) I will shew you some.
First thus:

1. All the matters inquirable, be either Ec-
clesiasticall, or Laie and Temporal: and these
Temporal, be either high treasons, petty
treasons, felonies, or otherwise punishable and
finable offences: Or thus,

2. All these points, do either concerne God,
the

the Prince or Subject: or thus,

3 The breach of these Articles, is offensive, either against the first, or the second Table of the ten Commandements of God: or thus,

4 All these matters be inquirable, either by vertue of the Commission of the Peace, and of the Statutes therein contained, or else by power of the Statutes not comprehended within the Commission: Or thus,

5 All these Lawes do either commaund or prohibite, things agreeing, or repugnaunt to some of the foure Cardinall (or principall) vertues, Prudence, Iustice, Fortitude, or Temperance. Or thus:

6 All these ordinances do either draw vs to the good, or withdraw vs from the euill, of the mind, the body, or Fortune. Or thus:

7 Men do offend these lawes, either by doing nothing of that which is commaunded: or by doing an other thing then is commanded: or by doing that amisse, which is commanded well. Or thus,

8 These lawes be offended, either by doing too much, or too little.

They may also be diuided, by the varietie of the punishments, and by some other Accidentall respects: all which I leaue to the choice of such as shal giue them in charge, and will now (for this time) set downe the Articles

cles themselves, after the order of the first and third sorts of diuision, pointing out in the first place the Ecclesiasticall causes, and then pursuing the Temporall.

The maner of
this Charge.

In which doing, first, I will omit all such Statutes, as do concerne, but onely some one, or a few particular places: knowing that I write to the most part, who haue not to do with them.

Secondly, I will purposely pretermitt the distinct rehearfall of punishments, contained in the Statutes; that I am to runne thorow: as well for breuities sake, because those doe rather pertaine to the Iustices, then to the Iurors, as also for that I haue an ancient Precedent or twaine, to make for me: the one of the Iustices in *Eire*, who (in their charge) did onely read the Articles in offence, without vsing any mention of the paines due vnto the same, As it appeareth by *Bracton*, *Britton*, and the small volume of the olde Statutes, vnder the Title, *Capitula Itineris*: and another like, of the Articles deliuered to the Enquest of office, in the Kings Bench, as is to be seene in the booke of Assises, lib. 27. pla. 44. And yet, if in some speciall point it may be seruiceable, to haue the pain of the law laid wide open (as in a great many, though the smallnesse thereof, it will do no good at all) the Reader shall find it for the most part quoted in the Margine here,

and

and ready to be vsed by him.

I will neither recite all the other parts of each generall statute by it selfe, nor yet comprehend them wholly and fully with others: because the first of these wayes would be very long, through the often iteration of the same things: and the other would be so crooked and comberous (through the varietie and difficultie of the exceptions) that the hearer would be many times lost, before I should come to the end.

I know, that M. Fitzh. was of the opinion, that the Iustices of Peace ought at their quarter Sessions, and may at their private Sessions, giue in charge to the Enquest, all such matters as they haue power to determine: and this he vygeth, as well by the oath of the Iustices (who are sworne to doe right in all causes within their Commission, or the statutes) as by the ignorance of the Iurors, who cannot be instructed but by the charge: which if it be so, I see not (for my part) how either these Iustices (that are bound to vtter all) can be discharged, or the Iurors (that ought to heare all) can be enformed without this, or some such compendious and plaine way, that may both shortly for the time, and lightsomly for the order, comprehend the chiefe substance of all that which belongeth to their Enquirie.

Powbeit, as I thinke it the best for the Iu-

D d. ij.

stices,

Iustices, to rehearse all such points, whereof the Iurie may make presentment before them: so yet, I hold them discharged (in my slender opinion) if they unfold only the articles of their Commission, and of such other statutes as do expressly authorize them to make enquirie.

For, as there be sundry lawes that do giue to Iustices of the Peace a certaine speciall (or particular) power in them, and do not yet yelo vnto them any authoritie to enquire vpon the same (of which sort be the statutes, 27.H.8.c. 20: & 32.H.8.c.7: of Tithes: The Statute 35.H.8.c.17: of Woods: The Statute 23.El.c.9: of Logwood, and sundry others) So also there be diuers others, that doe asoord to the Iustices of Peace, the power of hearing and determining, and yet do not expressly giue them the name of Inquirie.

And, forasmuch as they may heare and determine of these, by Information (giuen to themselves, and by them recommended to the Iurie) it seemeth to me, that they be not so necessarily bound to giue them in charge, but that they be wel inough discharged, if they be open and ready to receiue the Informations and presentments that shall bee offered vpon them: And of this kind be the Statutes of Highways (5.Eliz.cap.13: & 18.Fli.c.9.) the statute of Fighting in Church, or Churchyard (5.Edw.6.cap.4.) the Statute of Informers

mers (18. Eliz. cap. 5.) and sundrie others, whereof it would be superfluous to make rehearsall.

Neuerthelesse, because I will not, that my fantasie shall either stand agaynst his iudgement, or be preiudiciall to other mens profit, I haue contended (what I may) to deliuer the principall and most seruiceable parts, not onely of the Commission and of such Lawes as doe specially containe their Inquirie within them, but also of all such other Statutes as may be heard and determined by Iustices of the Peace at any their Sessions: and that in so narrow a roome, as (if I bee not after some prooofe deceiued) they may be distinctly read ouer in a couple of howers, at the most: So

alwaies, that the varieties of the punishments, the peeres of the Kings and their parliaments, and such other

Notes as fall in by the way,
be left vnread, and be
passed ouer.

Ecclesiasticall causes.

Extoll any
forraine
power.

Offence {
1 Premu-
nure.
2 Trea-
son.

Refuse the
oath.

Offence {
1 Premu-
nure.
2 Trea-
son.

If any person haue (within this halfe yere) by writing, printing, teaching, preaching, expresse deed, or act, aduisedly, maliciously, and directly affirmed, holden, set forth, or defended, the authoritie, preheminance, power, or iurisdiction Spirituall or Ecclesiasticall, of any forraine Prince or person whatsoever heretofore claimed, vsed, or vsurped in this realme, or any the Queenes dominions, or haue aduisedly, maliciously, and directly, put in vse, or executed any thing for the extolling, setting forth, or defence of any such pretended or vsurped iurisdiction, preheminance, or authoritie, or any part thereof. Or if any person (compellable to take the oath of Recognition of the Queenes Maiestie to be supreme gouernour in all causes within her dominions) haue refused to take the sayd oath, after lawfull tender thereof to him made, 1. Eliz. cap. 1. 5. Eliz. cap. 1. enquirable by words of 23. Eliz. cap. 1.

If any person, vnder the Queenes obedience haue at any time (within this peere) by writing, ciphering, printing, preaching, or Act, aduisedly holden, or
stood

stood with, to extoll, or defend the power of the bishop of *Rome*, or of his See ^{Pope.} heretofore claimed, or vsurped within this Realme: or by any speech, open deed, or acte, aduisedly attributed any such manner of authoritie to the said See of *Rome*, or to the bishop thereof, within any the *Queens* dominions, ye shall present him, his abettors, procurers, counsellors, aiders and comforters. 5. El. c. 1.

If any person haue by any meanes practised to absolue, perswade, or withdraw any other within the *Queens* dominions from their naturall obedience, or (for that intent) from the religion now established here, to the *Romish* religion, or to mooue them to promise obedience to the See of *Rome*, or other estate: Or if any person haue bene willingly so absolued, or withdrawn, or haue promised such obedience. ^{Withdraw any from obedience.}

Treason.

And if any person haue willingly aided or maintained any such offender, or knowing such offence haue concealed it, and not within twentie dayes disclosed it to some Iustice of Peace, or other higher Officer. 23. Eliz. ca. 1. ^{Misprision of Treason.}

If any person haue sayd¹ or sung ^{Masse.} Masse: or haue willingly heard Masse. ^{1 200. marks, & a yerres imprisonment.}

23. El. ca. 1.

^{2 100. marks, & a yerres imprisonment.}

Dd. liii.

If imprisonment.

Bull, Ag-
nus Dei,
&c.

Treason.

If any person haue vsed, or put in vse, any Bull, writing, or instrument of absolution or reconciliation, or of other sort, gotten from the bishop of Rome, or See of Rome, or from any person claiming authoritie frō the same: Or haue by colour of any such taken vpon him to absolue, or reconcile any person: or haue published any such Bull or instrument. Or if any person haue receiued such absolution, or haue procured, abetted, or counselled any such offender, to the intent to vphold such offence.

Premunire.

If any person haue (after such offence) aided, comforted, or maintained such offender, to the intent to vphold the authoritie of the said See of Rome.

Misprision of Treason.

If any person (to whom such Bull or Instrument hath bene offered or perswaded) haue not within sixe Weekes next after signified the same to some of the Queenes priuie Counsell, or to the Lord President of the North, or of Wales.

Premunire.

If any person haue brought hither frō the bishop, or See of Rome, or from any person authorized, or claiming to be authorized by any of them, any *Agnus Dei*, crosses, pictures, beads, graines, or such like superstitious things, and haue the

the same deliuered, or caused, or offered to be deliuered, to any the Queens subjects to vse or weare in any wise: and if any person haue to such intent receiued or taken the same, and haue not apprehended the offerer thereof, nor within three dayes after disclosed him to the Ordinarie, or to some Iustice of the Peace, nor within one day deliuered the thing to some Iustice of the Peace.

13. Eliz. ca. 2 : 23. Eliz. ca. 1.

If any person (being at libertie or out of hold) haue since the viii. day of May, in the 27. yeere of her Maiesties raigne, wittingly and willingly, receiued, aided, or maintained, within any part of her highnesse dominions, any Iesuit, Seminarie priest, or other such priest, deacon, or religious, or ecclesiasticall person, being borne within this realme, or any her highnes dominions, and (at any time since Midsummer in the first yeere of her Maiesties raigne) made, ordained, or professed by any authoritie deriued, chalenged, or pretended from the See of Rome, knowing him to be a Iesuite, Seminarie priest, or other such priest, deacon, or religious or ecclesiasticall person. 27. Eliz. cap. 2.

Iesuites
and Se-
minaries.

Felonie.

*Felonie.*Coniura-
tion.

If any person haue vsed Inuocati-
on or Coniuration of euill spirits for a-
ny cause: or haue vsed Witchcraft, In-
chantment, Charming, or Sorcerie,
whereby any person is killed or destrui-
ed: 5.Eliz.ca.16.

Prophe-
cying.

Offence

- 1 Ten lib.
& a yeeres
prison-
ment.
2 All his
goods, and
prisonment
for life.

If any person haue within these sixe
moneths aduisedly aduanced, publi-
shed and set forth, by writing, printing,
open speech, or deed, to any other per-
son, any fantasticall, or false prophesie,
vpon armes, fieldes, beasts, or badges, or
vpon any time, name, bloudshed, or
warre, to the intent to make thereby re-
bellion, dissension, losse of life, or other
disturbance within the Queenes domi-
nions. 5.Eliz.ca.15.

*Felonie.*Set forth
how long
the Queen
shall liue.

If any person haue, by setting of fi-
gure, casting of Natiuitie, or by Calcu-
lation, Prophesie, Witchcraft, Coniu-
ration, or other vnlawfull means what-
soeuer, sought to know, & haue set forth
by expresse words, deed, or writing, how
long her Maiestie shal liue, or who shall
raigne after her decease: Or else haue
aduisedly, and with a malicious intent
against her maiestie, vttered any direct
prophesie to such purpose. And if any
person haue aided, procured, or abetted
any such offenders. 23.El.ca.2.

If

If any person haue unlawfully procured any other to commit wilfull and corrupt perjurie, in any cause depending in sute in any of the Queenes Courts of Record, or in any Leet, Court Baron, Hundred, or Court of auncient demesne : or haue corruptly suborned any witnesse swozne to testifie in *perpetuam rei memoriam* : or if any person haue vpon such procurement, or by his owne act wilfully committed such Perjurie, 5.El.c.9 : & 14.El.ca.11.

Periurie.

Halfe a yeeres imprisonment, stand vpon the pillorie, and disabled for a witnesse.

If any person hath of purpose, maliciously, or contemptuously, molested, or by any unlawfull meanes misused any preacher lawfully authorized, in any his open Sermon or preaching, in any church, or other place, vsed, or to be appointed : and who were his aiders, procurors, or abettors, 1.Mar.ca.3. Learne if this Statute do stand, for this part.

Disturbe Preacher.

Three moneths imprisonment, and bound to his good port.

If any person haue (with in these three moneths) by contemptuous, or reuiling words, or haue aduisedly in any other wise, depraued, despised, or reuiled the blessed Sacramēt of the body and blood of Christ, 1.E.6.ca.1 : & 1.El.c.1.

Sacrament.

Imprisonment, and fine.

If any Parson, Vicar, or Minister, haue (since the last Assises) refused to vse the common prayers, or to minister the

the

Seruite
and Sacra-
ments.

Fine.

1 *Losse of his promoti-
on for a yeere : and
imprisonment by six
moneths.*

2 *Deprivation, and im-
prisonment by a yeere.*

3 *Deprivation, & pri-
soned for all his life.*

1 *100. markes, or sixe
moneths prisonment.*

2 *400. markes, or 12.
moneths prisonment.*

3 *All his goods, & pri-
sonment for life.*

Repaire to
Church.

*Twelue pence for each
offence, and punish-
ment by censures of
the Church.*

the Sacraments according to the booke of common prayers : or (wilfully stand- ing in the same) haue vbled any o- ther fourme in open praier, or in admi- nistration of the Sacraments, or haue spoken any thing in derogation of the said booke, or any part thereof : Or if a- ny person haue (since that time) in any play, song, or rime, or by any open word spoken in derogation of the said booke, or of any thing therein contained : Or haue caused, or maintained any parson, vicar, or Minister, to say any Common praier, or to minister any Sacrament in other maner thē after the said booke : Or haue interrupted any parson, vicar, or Minister, to say open praier, or to ad- minister any Sacrament, according to the said booke, 1. El. c. 2 : & 23. El. c. 1.

If any person (being aboue the age of 16. yeeres, and not hauing lawfull and reasonable excuse to bee absent) haue not repaired and resorted to his or her parish Church, or Chappel accusto- med, or (vpon let thereof) to some vsu- all place where Common prayer is to be vbled, vpon euery Sunday, and other holyday: and haue not there orderly and soberly abiden, during the time of such Common praier, preaching, or other seruice

service of God : and how long such person hath forborne, so to repaire and re-
 fort, 1.El.ca.2 : & 23.El.I.c.I.

If any person haue kept or maintai-
 ned any Schoolemaister which resor-
 teth not to the Church, or is not allowed
 by the bishop, or Ordinarie of the Dio-
 cesse, 23.El.ca.I.

Schoole-
 master.

*The maintainer 10.li.
 for each moneth.*

*Schoolemaster priso-
 ned for a yeere, and
 disabled.*

If any person haue maliciously stri-
 ken any other with any weapon, in any
 Church, or Churchyard, or drawen any
 weapon there to that intent, 5. Edw.6.
 cap.4.

Fighting
 in Church
 or church-
 yard.

*Loose one of his eares,
 or to be marked with
 F.*

If any person haue kept Faire, or
 Market in the Churchyard, Stat. Win-
 ton. 13.E.I.

Faire, or
 Market in
 Church-
 yard.

Fine.

If any person haue feloniously ta-
 ken goods out of any Church or Chap-
 pell.

Robbe
 Church or
 Chappell.

Felonie.

Lay

Lay causes.

High Treason.

Money.

If any person haue counterfaiſed the Queenes money, or haue brought falſe money into the realme, counterfait like the money of *England*, knowing the ſame to be falſe, to make merchandize or payment therewithall, 3.H.5.cap.7: & 25.E.3.cap.2: 3.H.5.cap.7: & 1.Mar.cap.1.

Felonies in Lay cauſes.

*Petit Treason.*Seruant,
& Maſter.Husband
and Wiſe.Clarke &
Prelate.

Murder.

*Felonie: and ſo bee the
reſt that follow.*

If any Seruaunt haue killed his or her maſter, or miſtreſſe: or any wiſe her huſband: or any Eccleſiaſticall perſon his prelate. 25.E.3.cap.2.

If any perſon haue (of prepenſed malice) killed or murdered another, openly, or priuily, whether he that was killed were an Engliſhman, or a Stranger, liuing vnder the protection of the Queene.

Poifoning
Murder.

If any haue wilfully killed any other by poiſoning: and who be his aiders, abettors, procurers, and counſellors, 1.E.6.ca.12.

Man-
ſlaughter.

If any perſon haue by chance meyley feloniously killed another.

If any perſon haue of malice prepenſed,

Lay causes.

The 4. Booke.

415 CAP. 4.

penſed, cut out the tongue, or put out the
eyes, of any of the Queenes Subiects,
5.H.4.ca.5.

Cut out
tongue, or
put out
eyes.

If any Gaoler, keeper, or underkec-
per, of a priſon, haue by durreſſe & paine
compelled any his priſoner, to become
an appeacher of others againſt his wil,
14.E.3.ca.10.

Gaoler
handling
ſtraightly
his priſo-
ner.

If any perſon haue committed the
detestable vice of Buggerie, with man,
or beaſt, 25.H.8.cap.6: & 5.Eliz.cap.
17.

Buggerie.

If any man haue rauiſhed a maide, Rape,
widow or wiſe, aboue ten yerres of age,
againſt her wil, although ſhe conſented
afterward, W.2.cap.34.

If any man haue carnally knowen
and abuſed any woman child, vnder ten
peerres of age, though ſhe conſented be-
fore, 18.El.ca.7.

Take wo-
man.

If any perſon haue taken a maiden,
widow, or wiſe, hauing lands or goods,
or being heire apparant to any, againſt
her wil vnlawfully (other then his
ward, or bondwoman) and of his procu-
rers, abettors and receiuers, knowing
thereof, 3.H.7.ca.2.

If any perſon haue robbed another,
going or riding by the way, or other-
wiſe, how much, or how little ſoener it
be

Robberie,

Curpurse.

Rob house

Booth, or
Tent.Larcinie,
and *pesite*
Larcinie.

Purueiours.

be that he taketh from him: or haue priuily and fraudulently picked or cut the purse of an other, being vpon him. 8. E. 1. ca. 4. Or haue robbed any house by day, or by night, any person being in the same, and thereby put in feare: Or hath robbed any person in any part of his dwelling, the owner, wife, children, or seruants, being therein, or within any other place within the precinct thereof, and then being waking, or sleeping: Or hath robbed any person being in a tent or booth, in a faire or Market, the owner, his wife, children, or any seruant being then within the same, sleeping, or waking, 5. Ed. 6. ca. 9.

If any person, or persons, haue feloniously taken the goods of any other: and whether the same be aboue xii. d. in value or vnder.

If any Purueiour for the Queenes Maiesties house, or his undertaker, deputie, or seruant, haue made any purueiance without warrant, and haue carried any thing away against the consent of the owner, being aboue xii. d. in value, 28. E. 1. cap. 2: 18. E. 2. ca. vii. 5. Ed. 3. ca. 4: 2. & 3. Phil. & Mar. cap. 6.

If any Purueior of the Queene, or his

his Undertaker, Deputie, or Seruant,
haue taken any cariage in any other
maner then is contained in his Com-
million 36.Ed.3.cap.2. Or haue made
purueiance without the testimonie and
appraisement of the Constables, and
foure honest men of the towne, & with-
out deliuering Tales or Indentures
vnder his Seale, testifying his puruei-
ances, the goods being aboue xii. d. in
in value, 5.E.3.ca.2: 25.E.3.ca.1. Or
hath taken any sheepe with their wools
betweene Easter and Midsummer, at
smal pices, and caried them to his own
house, and shorne them, 25.E.3.ca.15.

Quere, if the Felonie of Purueiours
(made 36.E.3.c.6.) be not altered by
23.H.6.c.14.

If any person haue found a Falcon, Hawke,
Tercelet, Lano, Laneret, or other Fal- embesel-
con, that was lost, & hath not forthwith led.
brought it to the Shirife, that he might
proclaime it, but did steale & cary away
the same, 34.E.3.c.22: 37.E.3.c.19.

If any Seruaunt (being 18. yeeres
of age, and not being an Apprentice) Seruaunt
hath gone away with, or hath conuerted embesel-
ling goods
to his own vse, any mony, iewels, goods deliuered.
or cattels of his maisters or mistresses,

E. i. and

and of his or her deliuerie to keepe, of the value of fortie shillings, to the intent to steale the same, 21.H.8. cap.7: 5.El.ca.10.

Burglarie.

If any person haue by night broken any House, Tower, Walls, or Gates, and hath entred in with an intent to do any robbery, murder, or other felonious act there: Or if any person haue burned any dwelling house: or haue by night burned any barne nere to a dwelling house.

Burne house or barne.

Breake prison.

If any person imprisoned for felony, haue broken prison: 1.E.2. Or if any other person haue broken the prison for such a prisoner, by which he escapeth: Or if any Gaoler haue willingly suffered such a prisoner to escape: and if any person, being arrested for felonie, haue bene rescued, and by whom,

Enlarge a prisoner.

If any person haue deuised vnlawfully and maliciously to set at libertie any prisoner endited of treason (concerning the Queens person) and haue expressly vttered the same deuise, 14.El.ca.2.

Take, keepe, or destroy castles, &c

If any person haue deuised maliciously to take or keepe from the Queene, any of her castles, townes, fortresses, or holds, or to raze, burne, or destroy any of the same maliciously and traiterously (the same

same hauing munition, or Souldiours therein of hers) and haue vttered the same deuice, 14. El. ca. 1.

If any person haue vnlawfully hunted in the night, in any forrest, parke, or warrein, or with painted faces, visors, or other disguisings, to the intent to be vnkno wen, and haue vpon examination by one of the Queenes counsell, or by a Justice of Peace of the same shire, wilfully concealed such hunters or hunting, or haue disobeied any arrest for such hunting, or made rescue to any person warranted to arrest such hunter, so that the warrant was not executed, 1. H. 7. c. 7.

If any person haue practised the arte of multiplication of gold or siluer, 5. H. 4. ca. 4.

If any haue the second time brought, sent, or receiued, into any ship or bot-
tome, any rams, sheepe or lambs being alieue, to be conueied out of the Queens dominions, or haue procured the same, 8. El. cap. 3.

If any person haue sold, exchanged, or deliuered within *Scotland*, or the bata-
ble ground, to the vse of any Scot (with-
out the Queens licence, vnder her great
seale) or sold, exchanged or deliuered to
any Scot within *England, Wales, Bar-*

E. ii.

mike,

Conuey
Sheepe.
horses in-
to Scot-
land.

wike, the Marches, or batable ground, to the intent to be rōueied into Scotland (without such licence) any horse, gelding or mare: and if any haue so boughed any of the same, 23.H.8.c.16:1.El.c.8.

Sland-
erous
newes.

If any person haue (aduisedly, & with a malicious intent against the Queens Maiestie) deuised, written, printed, or set forth any booke or writing, containing any false, seditious and slanderous matter, to the defamation of her Maiestie, or to the incouraging or moouing any insurrection or rebellion within her Realme or dominions: or haue (aduisedly, or with a malicious intent against her Maiestie) procured any such booke or writing to be written, printed, or set forth: Or haue maliciously, by any words, writing, or printing, wished, or desired her Maiesties death, or deprivation, or any thing directly to that effect: and if any haue aided, procured, or abetted any such offender, 23.Eliz.ca.2.

Rebellious
assemblies.

If any persons (of, or aboue the number of twelue) haue bene assembled, and haue intended, gone about and practised with force of armes unlawfully to change any lawes of this realme, or to cut or cast down any inclosure of parke, or inclosed ground, or the banks of any fish:

fishpoude, or any conduit head or pipe, to the intent they should lie open, or voide, or to haue any Common or way there: Or to destroy the Deere or Conies in any Parke or Warren, or Douchouses, or Fishin Poole, or pond, or to cut downe any houses, Barnes, Milles, or Bayes, or to burne any stacke of corne or graine, or other vsuall sustenance of men: and (being commanded by the Shirefe, or any Iustice of peace of the shire, or by the Maior, Shirefe, Iustice of Peace, or Bailifs of the citie, Borough, or Corporate towne, where the assembly was, by proclamation in the Queenes name to depart to their houses) haue notwithstanding continued together one houre after, or haue after that, forcibly attempted to doe any such thing.

And if any person haue vnlawfully by ringing of Bell, sounding of Trumpet, Dyne, Horne, or other instrument, or by firing of Beacon, or by malicious speeche, or Outcrie, or by setting vp, or casting any writing, or by any other act raised, or caused to be raised twelue persons, or aboue, in such maner, and to any such intent as is aforesaid, and they (being commaunded by proclamation, as before) haue neuerthelesse continued to-

gether one houre after, or haue afterward attempted forcibly to doe any of the said things: And if any the wife, or seruauent of any the said assembled persons, or if any other person haue willingly and without compulsion, deliuered, or conueied money, harnesse, weapon, or victual to any of the said persons assembled, during theit abode together as before. And if any person haue hindered or hurt any that did proclaime, or went to proclaime, as before: and if any the parties so assembled (knowing of that hinderance, or procuring it, haue neuerthelesse afterward committed or put in vze any the things aforesaid: And if any persons (to the number of fortie or moe) haue so assembled to the intent to do any the said things, or any other felonious or rebellious act, and haue continued together three houres, after such proclamation made, at or nigh the place of assemblie, or in some market towne next adioining, and after notice to them thereof giuen, 1. Mar. Parl. 1. c. 12: & 1. El. ca. 17.

Souldiour,
Mariner,
or Gunner
departing.

If any souldiour (entred a souldiour of Record) and hauing taken part of the Queenes wages, or any mariner or gunner (hauing taken prest wages to serue

serue the Queene on the Sea) haue not accordingly gone to his captaine (vnlesse he were letted by notorious sicknesse, or other impediment from God) or haue departed from his captaine, without his licence vnder his seale, 18. H. 6. cap. 19: 2. & 3. Edw. 6. cap. 2: 4. & 5. Philippi & Maria cap. 3: & 5. Elizabeth. cap. 5. But, consider whether this entring of Record, haue any vse now.

If any Strangers, calling themselves, Egyptians or being commonly called Egyptians, haue remained in the Realme one moneth: And if any person (being foureteene yeeres of age) which hath bene seene, or found in the felowship of such Egyptians, or which hath disguised himselfe like to them, haue remained here or in *Wales* by the space of one moneth, either at one time or at seuerall times, 1. & 2. Phil. & Mar. ca. 4: 5. El. ca. 20.

If any Vagabond (or Rogue) haue Rogues. after 60. daies next after his marking through the eare, or iudgement to be so marked, fallē againe to Rogish life (being then 18. yeeres old, or aboue:) And if any such Rogue, being vpon his said second conuiction taken into seruice for two yeeres, haue departed within those

two peeres against the will of him that by Recognisance tooke him into seruice: And if any Roge being conuicted in the second degree, haue at any time after bene conuicted of Rogish life. 14. El.c.5: 18.El.c.3. There can be none accessaries to these two last felonies,

Felonies omitted.

Note that some Felonies be here omitted, either because there is none vse of them now, or else for that they be for particular places, as:

Prouisors.

The felonie of Prouisors. 13. R.2. Stat.2.cap.2.

Wools.

The felonie of Wools and Woolfellers, 18.Hen.6.cap.15. and certaine felonies in the Statutes of the Staple, 27.E.3. whereof I doubt.

Powdike.

The felonie of *Powdike*, 22.H.8. ca. 11: & 2.& 3.Phil.& Mar.c.19.

Armed.

It seemeth also by 25.E.3.c.2. that there was a felonie, for riding armed, &c. which (I thinke) is not so construed now.

The Felonie of Embeselling Records. 8.H.6.c.12.

Accessaries before

If any persons haue commaunded, counsailed, waged, or procured to bee committed any Petit treason, Murder,

Han:

Manslaughter, Rape, Robberie, Burglarie, or other the felonies aforesaide.

If any persons knowing the sayde Accessaries after. Felons, haue receiued, comforted, aided, abetted, or fauoured them, before their attainder, or after.

Hitherto of felonies and their Accessories in Lay causes, all which are punished by the paines of death, except petie Larcenie.

If any person haue mayhemed another of any member, whereby he is the lesse able to fight, as by putting out his eye, striking off his hande, finger, or foote, beating out his foreteeth, or breaking his skull: And of their Accessories.

Griuous Fine.

If any haue committed vnlawful assault, beating, wounding, or such like trespasses, against the body of any man: Or haue with force and against the law take the goods of an other, or haue done any Trespasse in the lands of an other. Commission of the peace.

Fine.

If any Ordinarie, Archdeacon, Officiall, Shirife, Escheator, Coroner, Under-shirife, Baylife, Gaoler, or other officer, haue by colour of his office, or for doing his office, take a greater, or more excellue reward or fee, then belongeth to him: or haue taken any fee or reward for

Extortions.

Fine.

for

for expedition in doing his Office, or haue vnlawfully exacted any oath, or other vndue thing: Commission of the Peace.

Escheator. If any Escheator (other then of such a citie, borough or towne, as hath authoritie to make Escheators within themselves by letters pattents of the Queen, or her progenitours) haue taken vpon him that office in this Shire, or occupied it by himselfe, or another, and had not then in this shire, Lands, Tenements, or Rents, for life at the least of twentie pounds by yeere: or haue sold, or set to ferme that office, or made any deputies for whom he wil not answer, and whose names he hath not certified within 20. dayes after into the Eschequer, 12. E. 4. 9.

Loose forsie pound.

Loose forsie pound.

Loose fine pound.

Or if any Escheator hath taken for the execution of any *Diem clausit extremum*, or other *Writ* in one Countie, above xl. shillings in all: or that xl. shillings where the lands are not found to be holden *in Capite*: 23. H. 6. ca. 17: & Fitz. 143. Or hath take for the finding of any office of lands (not exceeding five pounds by yere) above fifteene shillings in all, for all the thinges thereof, 33. Hen. 8. ca. 22.

If any Shirife haue letten his countie, or any his bailiwikes, hundredes, or wapentakes : or haue returned in any pannels, any bailifes, officers, or their seruants, or seruants seruants, or haue refused to let to baile (vpo sufficient suerties) any person being in his custody, because of any action personall, or because of Enditement in trespassse, & not being in for any condemnation, execution, vrelawpie, excommunication, suertie of the Peace, or commandement of any Justice, or for being a vagabond : Or haue taken any obligation by colour of his office, but only to himself, & vpon the name of his office, and vpon condition only to appeare according to the writ or warrant: Or haue taken for an arrest above xx. pence. Or if he, or any other minister, haue taken any thing, for making of any Returne or Pannell : or above foure pence for the copie of a Pannell : or above foure pence for the sayd Obligation, or for any Warrant or Precept : Or any Bailife above foure pence for making any arrest : or the Gaoler above foure pence, vpon the committing to his Ward of any person arrested, or attached, 23. H.6.c.10.

If any Shirife, or other his minister,

Shirifes &
their Mi-
nisters, &c.

*Forfeits forris pound, &
loose treble damages
to the parties.*

haue

Shirifes,
arresting,
or leuying
fine for
Endite-
ments in
his turne.

Loofe fortie pound.

Shirifes
entring of
plaints &
leuying
amerce-
ments.

Loofe fortie shillings.

Bailife ser-
uing war-
rant.

*Fine to the
king treble
damages to
the partie.*
Shirifes
must shew
the E-
streats vn-
der the
Eschequer
Scale.

haue arrested, or imprisoned, or caused
any fine, or ransome, or amerciament to
be leuied of any person by reason of any
enditement, or presentment made in the
Shirifes turne, or lawday, without pro-
cesse from the Iustices of Peace for the
same first obtained: Or haue not broght
in such enditements and presentments
to the Iustices of the Peace, at their
next Sessions, 1. E. 4. c. 2.

If any Shirife, or any his mini-
sters, haue entered into his booke, a-
ny plaints in any mans name, not be-
ing present in the Court, either in his
owne person, or by sufficient and honest
attorney, or deputie: Or haue entred
any moe plaints then the plaintife sup-
poseth that he hath cause of action for:
or haue leuied the Shire amerciaments
without booke endented betwene them
and two Iustices of the Peace: Or if
the Bailife of the Hundred haue made
default in warning or executing any
warrant against any defendant in the
Shirifes Court, 1. R. H. 7. ca. 15.

If any Shirife or his minister, haue le-
uied any the debts of the Queene, with-
out shewing to the parties the Estreats
of the same, vnder the seale of the Ex-
chequer, 42. E. 3. c. 9: & 7. H. 4. c. 3.

If

If the Shirife of this Shire, or any other person (to whom it appertained to make returne of any Writ) hath returned any Iuror without the true addition of the place of his abode at the time of that returne, or within a yeere next before, or without some other addition by which that Iuror might well be known. If any Estreat of Issues hath bene gathered of any person, other then such as by vertue of the said Estreat was of right chargeable or charged therewith.

Shirifes to
returne
additions
of Iurors.

Five markes to the
Queene.

Five markes to the
parcie.

27. Eliz. ca. 7.

If he that taketh vpon him to be the Vnder-shirife of this shire, hath not (before his exercising of that office) taken the oath of the Supremacie, and the oath of his office, before the Iustices of Assise or one of them, or before the *Custos Rotulorum*, or two Iustices of the Peace, the one being of the *Quorum*.

rifs, clarks,
and Bai-
lifes to be
sworne.

If any Bailife of fraunchise, deputie (or clarke) of the Shirife, or Vnder-shirife, or other person taking vpon him to returne any Enquest, Iurie, or Tales, or to meddle with the execution of processe in any court of Record, haue not before that receiued and taken the said oath of Supremacie, and the oath (appointed for such officer to take) before some of the

Loose fortie pound.

the said Iustices, after this maner :

I *A. B.* shall not vse or exercise the office of Vnder Shirife (deputie, clarke, bailife, &c.) corruptly during the time that I shall remaine therein : Neither shall or will accept, receiue, or take, by any colour, meanes, or deuise what so euer, or consent to the taking of any maner of fee, or reward, of any person, or persons, for the empanelling, or returning of any Enquest, Iurie, or Tales, in any court of Record for the Queen, or betwixt partie & partie, aboue two shillings, or the value thereof, or such fees as are allowed or appointed for the same by the Lawes and Statutes of this realme. But will, according to my power, truely and indifferently with conuenient speed impanel all Iurors, and returne all such Writtes touching the same, as shal appertaine to be done by my dutie or office, during the time that I shall remaine in the sayd office : So helpe me God.

*Treble damages to the
partie.*

If any Vnder Shirife, or other of the said persons, hath committed any Acte contrary to the said oaths. 27. Elizab. cap. 12.

If any Shirife, or Gaoler haue denied

ed

ed to receiue felons, by the deliuerie of Shirife & any Constables or towneships, or haue Gaoler.

Fine.

4.E.3.ca.10.

In liberties, the Bailifs, Stewards, Fees in and other ministers there, haue like liberties. fees: and punishments, for extortion, as Shirifes and their ministers haue out of liberties. 27.H.8.ca.24.

If any Coroner haue refused to doe Coroner.

his office vpon the view of a dead body by misaduecture, without taking any fee *Loose forsie shillings.*

therefore, 1.H.8.ca.7. or haue taken vpon the view of the body of a man slaine or murdered, aboue thirtcene shillings foure pence, of the goods of the slaiet or murderer, if he had goods or (otherwise) of the towne, where he was slaine *Loose fine pound.* in the day time and was suffered to escape, 3.H.7.ca.1.

If any Ordinarie, or his scribe, or re- Ordinary.

gister, haue taken mo, or greater fees, for the probate of a Testament, or for letters of administration, then he ought to take, that is to say, sixe pence for the scribe, for writing the probate of a Testament, that shal be brought written in parchment, and likewise sixe pence for the administration, where the goods of the Testator, or Intestate be not aboue *Loose ten pound, and so the parsie so much as is taken contrary so this acte.*

fine

five pounds: If the goods be aboue five pounds, and not aboue fortie pounds, then two shillings six pence for the Ordinarie, and twelue pence for the scribe. If they exceed fortie pounds, then two shillings six pence for the Ordinarie, and two shillings six pence to the scribe, or else one peny for euery ten lines at ten inches length, at the scribes election: the like shall be giuen for euery copie of a Testament or Inuentarie, or else after the rate of lines as before, 21. H. 8. cap. 5.

*Vnder paine of Attach-
ment.*

If the Ordinarie haue cited any man to beare witnesse in the Spiritual court: Or haue exacted any oath in any cause, other then Testamentarie, or Matrimoniall.

Parson,
Vicar,
Curate.

If any Parson, Vicar, or Curate, haue taken aboue foure pence for entering in the Church-booke the licence of a sicke person to eate flesh vpon the Wednesdaies: 5. Eliz. cap. 5: Or aboue two pence for registering of a Testimoniall of any Seruaunt departing from one place to another, 5. Eliz. c. 4.

Fine.

Mortuarie

If any Spirituall person (or any other for him) haue taken Mortuarie (or corps present) or any thing for the same in any place, whete the same was not
bled

used to be given before the xxi. yeere of king Henry the eight: or haue taken (in places where Mortuaries where then used) any thing for a Mortuarie where the goods of the dead person were vnder ten marks: or more then three shillings foure pence therfore, where the goods were of the value of ten marks, and vnder xxx. li. or aboue six shillings eight pence therfore, where the goods were vnder xl. li: or aboue ten shillings where the goods were aboue xl. li. 21. H.8.ca.6.

Forfeits so much as he shall take ouer: and loose xl.s. to the partie grieved.

If the Clarke of the Peace haue taken aboue twelue pence for the introl-
ling of the bargaine and sale of any land, not exceeding xl. shillings by the yeere: or aboue two shillings six pence, if the land exceed that value by the pere, 27. H.8. cap. 16: Or haue taken aboue two shillings in all, for any licence and Recognisance of a Badger, Drouer, Kidder, or Lader, and for the registering thereof, 5. El. cap. 12. Or haue taken aboue twelue pence for a Recognisance of him that taketh a Rogue into his seruice for one yeere, 14. El. ca. 5.

Clarke of the Peace.

Fine.

Fine.

Fine.

If the clarke of any Iustice of Peace haue taken aboue twelue pence for any Retognisance of an Alehouse keeper,

Iustices clarke.

Fine.

If f. i.

or

or Tipler, 5.E.6.ca.25.

Clarke of
the Mar-
ket.

Offence 1 { 2. li.
2 { 10. li.
3 { 20. li.

Scauage.

Loofe twentie pound.

Scale
weights.

Loofe fortie shillings.

Fees omit-
ted.

Purueiours.

If the Clarke of the market hath ta-
ken any common fine, to dispence with
faults: or hath ridden with into then fire
horses, or hath taried longer in the coun-
trei then the necessitie of his businesse
required. 13.R.2.ca.4.

If any officer haue in any towne ta-
ken Scauage or Shewage (that is to
say) any thing for the shewing of wares,
merchandize that be truly customed to
the Queene before, 19.H.7.ca.8.

If the Maior of this towne of Maid-
stone (and so of other townes, in other
Shires) haue take aboute i. d. for sealing
a bushel measure, or aboute ob. for any o-
ther measure: or aboute i. d. for sealing
an C. weight, or aboute ob. for halfe C.
weight, or aboute a farthing for any lesse
weight. 7.Hen. 7. cap. 3: & 11.Hen.
7. cap. 4.

Sundry other fees of Officers there
be, as of Alnageours, Gaugeours, Ser-
ieaunts at Armes, and others wherof
there is not so common vse, and ther-
fore I omit them.

If any Purueiour of the Queenes
Majestie haue taken any thing of the
value

value of xl. s. or vnder, without readie
paiment therefore made: If any Con-
stable or Borsholder haue not (vpon re-
quest made) assisted the owners to resist
the Purueiours so taking: And if any of
the Queenes officers haue procured a-
ny to be arrested or vexed for such resis-
tance, 20. H. 6. c. 8. & 23. H. 6. ca. 2.

Loose } Double of the
thing taken.
Double da-
mages.

Loose twentie pound.

If any Purueiour haue taken, or fel-
led, any timber trees (meete to be bar-
ked) but only in barking time, except it
were for the reparation or building of
the Queenes houses or ships: Or haue
taken any more then the very timber of
such trees, 5. Eliz. ca. 8.

Loose xl. s. for each tree

If any such Purueiour haue taken a-
ny thing of any man, to the end to spare
him: or haue taken coine by any other
measure then by the stricken bushel, or by
any more then eight such bushels to the
Quarter: or haue taken cariage there-
fore, without making readie paiment,
25. Ed. 3. cap. 1. : 36. Ed. 3. cap. 3. : & 1.
H. 5. cap. 10.

Two yeeres prisonment:
treble damages: and
ransome.

One yeeres prison-
ment.
Five pound to the
Queene, and v. li.
to the partie.

Of Purueiours within five miles of Vniuersi-
Oxenford or Cambridge, See 2. & 3. lies.
Phil. & Mar. ca. 15 : 14. Eliz. ca. 11.

If any common Informer or Pro Informer,
ff. ii. moter

Loose x. li. and stand on
the pillorie.

moter (as he is commonly called) haue
compounded or agreed with any person
for any offence against any penall law,
without the order or consent of some of
the Courts at Westminster, or haue
willingly delaied or discontinued his
sute once commenced, 18. Eliz. ca. 5 : &
27. El. ca. 10.

Huy and
cry.

Fine.

If any man haue raised huy and cry
without cause, or (it being raised) vpon
good cause haue not bene ready at the
commandement of the Shirife or at the
huie and cry of the countrey, to pursue
and arrest Felons, or such as haue dan-
gerously hurt any man: And if the Shē-
rife, or any Bailifs haue not followed
such huy and cry with horse and ar-
mour. W. 1. 3. Edw. 1. cap. 9 : 3. Ed. 1.
Officium Coronatoris : Statut. Winche-
ster, 1. 3. E. 1.

Watch.

Fine.

If the Watch in euery borough and
towne, haue bene kept from Sunne ri-
sing to Sunne setting, betweene As-
sension day and Michaelmas day, to
arrest Straungers that passe by in the
night season, Statut. Winton. 13. Ed-
war. 1.

High
ways.

If any lord of the Soile haue not en-
larged the high way from market to
market, so that no dike, bush nor tree (ex-
cept

cept great trees) be within two hundred foote of each side thereof: Statut. *Winton.* 13. E. 1.

If any persons (except the Queens servants and officers, in doing her seruices, and their company, aiding them

Ride or go armed.

in that behalfe) haue ridden or gone armed, by day or night: or haue brought force in affray of the people, before the Queenes Iustices, or otherwise: Statute *Northampton*, 2. Edw. 3. capitulo 3.

Imprisonment, and losse of the Armour.

If any person arrested or imprisoned for Felonie, haue bene negligently suffered to escape, 1. R. 3. ca. 3.

Escape by negligence.

If any be a Barrettour, or a common quarrellour, or otherwise of euill name and fame, 34. Edw. 3. cap. 1: Or a maintainer of quarels, or an Embacer of Iuries, 33. Hen. 8. cap. 10: & 37. Hen. 8. cap. 7: & 38. Edw. 3. cap. 13.

Fine.

Barrettors
Maintainers.

Embracers.

Prisonment, and good Abearing,

Ten times so much as he taketh, or a yeeres prisonment.

Barrettour.

The word (Barettor) may be deriued either of the French *Barat* (and so it seemeth to bee taken in the Statute of Champartie, W. 2. cap. 49.) signifying deceit, so that Barrettour should notifie a deceiuer: or else of the Latin *Baratro* (or *Balatro* as some write it)

Ff. iij.

which

which betokeneth a vile knaue or vn-
thrif, & (by a *Metaphore*) a spot in the
common wealth. But whatsoeuer the
word do properly denote, commo vse
(*Quem penes arbitrium est, & ius, &
norma loquendi*) taketh it for a com-
mo quareller, or a maintainer of *Qua-*
rels: & in that sence I thinke it to stand
in the old statute called *Ragman*, and it
meaneth him that medleth in the quas-
rels of other men, whether it bee by
fight, or by sute in law.

Cham-
partours.

Fine.

If any be a Champartour, that is to
say, one that mooueth pleas or sutes, or
causeth or procureth them to be moued,
at his owne costes; to the end to haue
part of the land, or other thing in vari-
ance. 33. E. 1.

Jurour.

Prisonment and ran-
some.

If any Juror in any Enquest here,
haue taken any thing of any man to
make his presentment fauourable, 5.
Ed. 3. cap. 10.

Liueries
of compa-
nies and
badges.

Prisonment, fine and
ransome.

V. li. losse to

the retainor,

& the like to

the retained

for each
moneth.

If any person haue by himselfe, or o-
ther for him, giuen any liuerie of signe
of company, or badge, or retained any
man, other then his houldhold seruaunt,
officer, or learned man in the Law, 1. H.
4. cap. 7: 2. Hen. 4. cap. 21: & 8. Ed.
4. cap. 2.

If any company of men (other then
men

men of fraternities, and men of artes in cities and boroughs) haue made any one generall sute of cloth, hoods or hats amongst them, to be knowen by. 7. H. 4. cap. 14.

Loose fortie shillings.

If any person haue (within these three moneths) aduisedly, and with a malicious intent against the Queenes Maiestie, of his owne imagination spoken any false sedicious and slanderous newes, or sayings of the Queens Maiestie: or haue (within the said time) aduisedly, and with a malicious intent, spoken any such newes or tales, to the slander and defamation of our sayde Queene, of the reporting or speaking of any other, 23. Eliz. ca. 2.

False newes.

Loose his eares, or pay 200. li. for the first offence.

Loose one eare, or 200. marks for the first offence.

If any person haue by writing, or open speach notified, that the eating of fishe, or forbearing of flesh, vpon any dayes, now vsually obserued as fish dayes, and mentioned in the statute (5. Eliz. cap. 5.) is of necessitie for saluation of soules, or is the seruice of God, or therwise then as other politike Lawes be, 5. Eliz. ca. 5.

Prisonment.

If any person haue falsly and deceitfully gotten into his possession any money, or any other things of any other mans, by colour of false priuie token,

False tokens or letters.

Suffer any corporall peine, except death.

or of counterfeit letter, made in another mans name. 33. H. 8. cap. 1.

Vaga-
bonds and
Rogues.

*Whipped, and boared
shorow the eare, for
the first offence.*

If any haue vttered themselues to be Doctours, hauing no sufficient authoritie, or haue gone about idle, vsing craftie games, or pretending skill in Palmestrie, telling of destinies, or other abused sciences: or (that being whole and able in body, and not hauing land, Master, nor meane to get their liuing) can giue no reckoning how they get their liuing lawfully: If any Fencers, Bearwards, common plaiers in Enterludes, or minstrels (not belonging to any Baron or personage of greater degree) Juglers, Pedlers, Tinkers, or petit chapmen, haue wandred about without licence of two Iustices of Peace: If any common labourers (being able in body) haue vsed loitering, or refused to worke, for the appointed wages: If any haue counterfaieted licences, or passports, or haue vsed such, knowing them to be counterfeit: If any scholars of Oxford or Cambridge, haue gone about begging, not authorized vnder the Uniuersitie seale, or shipmē, pretending losse by sea, or deliuered prisoners begging for their fees, or traueilling to their Countrey or friends, not being lawfully licenced: If
any

any seruant departing out of seruice, be found with a counterfeit Testimoniall. And if any poore body haue trauelled from home towards Bath or Buckstone, without lawfull licence, or being provided for in his or her parish, haue notwithstanding secretly wandred abroad without licence: If or all these be rogues and vagabonds. 14. Eliz. cap. 5.

If any Constable or Borsholder, haue not done his best endeour to apprehend such Rogues as haue begged or made abode within their limits, or haue wilfully suffered any of them to escape punishment: And if any person haue giuen harborow or other relief to any such Rogue: If any person haue hindered the execution of the statute concerning Rogues, or haue made rescous to any person endeavouring the execution thereof, 14. Eliz. c. 5 : & 18. El. ca. 3.

If any persons (to the number of three or aboue) haue bene riotously assembled, to beat any man, to enter vpon a possession, or to do any such unlawfull act, and haue done it in deed, or attempted to do it: Or haue bene assembled together in Routes for any common quarrell: Or otherwise unlawfully against the Queenes Maiesties Peace. 2. H. 5.

cap.

Officers not punishing Rogues. *Lose a noble for each Rogue.*

Giuing reliefe to Rogues. *Fine, not exceeding xxx.*

Disturbing of the execution of the law against Rogues. *Prisonment, and losse of v. li.*

Riots, Routs, unlawfulfull assemblies

Prisonment and Fine.

cap. 5. Commission vnder the name of Conuenticles.

Rebellious assemblies.

One yeeres prisonment,
and treble damages
to the partie grieued,
and costes,

If any persons (aboue the number of two, and vnder 12,) being assembled, haue intended vnlawfully with force to murder or slay any of the Queenes subiects: Or to cut or cast downe any inclosure, or banks of any fish-pond, or conduite head, or pipe, or to do any the deeds (mentioned in vnlawfull assemblies before) and haue not departed vpon proclamation, but haue attempted to do any of those things,

Three moneths prisonment.

Or if any person (being mooued to make any rebellious assemblie) haue not within 24. houres after disclosed the same to a Iustice of the Peace, or to the Shirife: Or if any person haue stirred or procured any other to make such assemblie, 1. Mar. parl. 1. cap. 12: 1. Eliz. cap. 17.

Fine.

Lying in await.

If any haue lien in await, to maime, or kill any other. Commission.

Forcible entries.

Prisonment, and fine.

If any haue entred into lands or possessions with force, or entring peaceably, haue holden the same with force, 8. H. 6. cap. 9.

Cut pond head, fish: hunt
Deere:

If any person haue vnlawfully broken, or destroyed the head or damme of any pond, mote, stewe, or seuerall pit wherein

wherein fishes are put by the owner thereof: or haue wrongfully fished in any of the same, to the intent to take away the fish against the owners will: Or haue wrongfully entred into any parke or other ground, before this Statute inclosed, or after this Statute, (by the licence of the Prince) to be inclosed and vsed for keeping of Deere, and haue wrongfully hunted, driuen out, hurt or killed, any Deere there: Or if any person haue vnlawfully taken away any Hawke, or the egges of any Hawke out of the woods or grounds of any other person, 5. El. ca. 21.

take
Hawkes,
or their
egges.

Three moneths prison-
ment, and bound to
his good behauiour
for seuen yeeres.

If any person haue taken, or caused to be taken, vpon his owne, or other mens ground, the egges of any Falcon, Goshawke, Lanner, or Swanne, or haue taken any Gier Falcon, Goshawke, Tercell, Lanner or Lanneret, or haue purposely driuen them out of their couerts: or haue born any Hawke of the breed of England, called a Niclle Goshawke, Tasset, Lanner or Lanneret, 11. H. 7. ca. 17.

Take
Hawkes
egges: take
Hawkes,
or driue
the away.

One yeere and a dayes
prisonment & fine.
Loose ten pound.
Losse of the Hawke.
Niclle
Hawke.

If any Artificer, Labourer, or other Lay man, not hauing lands or tencements of xl. s. by yeere, or any spirituall person not aduanced to ten pounds liuing

Dogs, nets
fittets.

One yeeres imprisonment. living by the peere, haue kept greyhound, hound, or other dog to hunt: or haue vsed firrets, nets or other engines, to take or destroy Deere, Hares, Conies, or other Gentlemans game. 13. R. 2. ca. 13.

Trace
Hare.

If any person haue traced, killed and destroyed any Hare in the snow. 14. H. 8. cap. 10.

*Loose a noble for each
Hare.*

Take Phe-
sants or
Partriches

If any person whatsoeuer, haue taken, or killed any Phesants or Partriches, with any maner of net, or other deuise whatsoeuer, vpon the freehold of any other, without speciall licence, or in the night time, except it were vntwillingly, by lowbelling or tramelling, who also did then and there presently let them goe againe: Or if any person haue hawked, or with his Spaniels hunted in any ground (not being his owne) where any corne or graine did then grow, or before it was shocked, or copied, without the consent of the owner of such corne or graine. 11. H. 7. cap. 17: & 23. Eliz. ca. 10.

Loose { *Twentie shil-
lings for ech
Phesant.
X. s. for each
Partrich.*

Hauking
in corne.

Loose fortie shillings.

Vsurie.

If any person haue by himselfe or any other, sold any merchandizes or wares to any other, and haue within three moneths next after that, by himselfe or by any other bought the same, or any

any part thereof againe, vpon a lesser price, knowing them to be the same: Or if any person haue by any corrupt bargain, mortgage, or other means, taken in gaine aboue the rate of ten pounds for the hundred, for one whole yeeres forbearance, and so after that rate, for more or lesse, 37.H.8.ca.9: 13.El.cap. 8.& 27.El.ca.11.

If any haue within these two yeeres forestalled, regrated, or ingrossed unlawfully.

Loose the treble value: and be prisoned, and fined.

Forestallers.
Regrators.
Ingrossers.

A Forstaller is he, that buieth or causeth to be bought, or maketh contract or promise for the hauing or buing of any victuall or wares, comming by land or water towards any Faire or market to be sold, or comming from beyond the Sea towards any Citie, Port, Hauen, Creeke, or rode of this Realme, to bee sold, before the same shall be in the Faire or Market, Citie, Port or Hauen readie to bee sold: Or that by any means maketh motion to any person for enhancing the price of the same: Or that doeth disswade, mooue, or stirre any person (comming to the Market or Faire) to forbear to bring any of the same to any Faire, Market,

Forstaller.

Offence

- 1 Lose the goods, & be prisoned two moneths.
- 2 Lose double the goods & be fixe moneths prisoned.
- 3 Lose the goods, & stand on pillorie.

Market, Citie, Port, or Hauen to bee sold.

Regrator.

A *Regrator* is he, that regrateth or getteth into his possession, in any Faire or market, any corne, wine, fish, butter, cheese, candles, tallow, sheepe, lambs, calves, swine, pigges, geese, capons, hennes, chickens, pigeons, conies, or other dead victual whatsoeuer, brought to any Faire or Market to be sold, and selleth the same agayne in any Faire or Market kept there, or within foure miles thereof.

Ingrosser.

An *Ingrosser* is he, that ingrosseth or getteth into his hands by buying, contract, or promise, taking (other then by demise, lease or grant, of land or of tithe) any corne growing in the fields, or other corne or graine, butter, cheese, fishe, or other dead victuall, within *England*, to the intent to sell the same againe. But such as buy barley or oates (without forestalling) and turne the same into malt or otemeale, and sell it againe: and such victuallers of all sortes, as buy victuall (without forestalling) and sell it by retaile againe, and Badgers & Drouers (being lawfully licenced & not abusing their licences) are excepted. So be all buyers

ers of wines, oiles, spices, and other
forrain victuals brought from beyond
Sea hither, except fish and salt only. 5.
E.6.c.14: 5. El.c.12: 13. El.c.25.

If any person haue within these two Seed corn.
yeeres bought Corne in any Faire or
Market for change of his seed (hauing *Loose the double.*
then sufficient for his house, & for sow-
ing his ground for a yeere) and did not
bring thither (if he might) so much as
he did so buy, and did not the same day
sell it after the price then going, 5.E.6.
cap.14.

If any person haue (at any time *Making of*
within this pere, the moneths of June, *Malt.*
July, and August onely excepted) made
any Barley malt, that was not the time
of thre weekes (at the least) in the fat,
flooze, steeping, and sufficient drying:
and if in any of the said three moneths, *Loose twentie pence for*
and was not seuentene dayes (at the *every quarter.*
least) in the fat, flooze, steeping, and suf-
ficient drying.

If any person hath within this yeere
mingled any malt not sufficiētly made,
(or made of mowburnt or spired barley)
with other good malt, and after put the
same to sale.

If any person hath within this pere
put

put to sale any malt not sufficiently well troden, rubbed and fanned, where by halfe a pecke of dust, or more, may be fanned out of one quarter thereof. But this Acte extendeth not to malt made for the prouision of a mans owne house or familie, 2. & 3. E. 6. ca. 16: and reuiued 27. Eliz. ca. 14.

Line cattell.

Loose the double.

If any person haue within these two yeeres bought Oxen, Ronts, Steeres, Kine, Heifers, Calues, Sheep, Lambs, Goates or Kids, liuing, and sold any of the same againe aliue, before he hath kept them fīue weekes, 5. E. 6. ca. 14.

Tanned leather.

Loose the price thereof.

If any person (not hauing the Queenes speciall licence) haue bought or ingrossed tanned leather, to sell it againe, vnesse he be an Artificer that maketh wares of such tanned leather, and worketh it in the same, 5. E. 6. c. 15: 1. El. cap. 9.

Woollen yarne.

Loose the value thereof.

If any person haue bought any woollen yarne, and haue not made cloth thereof, 8. H. 6. cap. 5. Or haue bought any wooll, but of the owner of the Sheepe, and of the Tithe, 14. R. 2. ca. 4.

Sucking calues.

Loose a noble for each calfe.

If any butcher or other person, haue killed any yong suckling Calfe, to be sold whole, or by retaile, which was calued betweene the first of Ianuary, and the

the first of May, 24. Henric. 8. cap. 7: Weinlings
 14. Elizab. cap. 11. Or haue killed any vnder two
 Weinling, Bullocke, Steere, or Hei- yeeres.
 far (vnder the age of two yeeres) to be Loose a noble for each
 solde whole or by retaile: *ibidem* ca. 9. Calues Loose a no-
 Or haue killed any Calfe to sell, being vnder five ble for each
 vnder five weekes olde, 5. El. cap. 8. weeks old. calfe.

If any person haue willingly (be- Egges of
 twene the first of March & last of June wildfoule.
 in any yeare) taken away, or destroyed Prisonment for a yeere
 the egges of any wildfoule (vsed to be and loose after a rate
 eaten) from the place where they did for each egge.
 lay them, 25. H. 8. c. 11: 3. Ed. 6. ca. 3.

If any person (feeding about 120. Milch kine
 share sheep for the most part of the yere, & calues.
 vpon his groundes that he meete for Loose xx. s. for euery
 milch kine, and wherein no person hath moneth for each cow:
 any commune) haue not for euery and the like for each
 60. calfe. calfe.
 such sheepe reared vpon one calfe, during
 the time of keeping such sheepe, 2. & 3.
 Phil. & Mar. cap. 3: 13. El. cap. 25. Or
 if any person (feeding vpon his seueral The like peine, as the
 pastures about 20. oxen, rontes, steeres, last before.
 scrubs, heifares, or kine) haue not for e-
 uery tenne such, beasts kept one milch
 Cow, & for euerie two kine weaned and
 reared vpon yearely one Calfe, except it
 chaunce to die. *ibid.* He that feedeth such
 sheepe or beastes, onely to be spent in
 his house, is excepted. *ibidem.*

Of- fence	1	Salmons. Burne the nets.
	2	Three mo- neths pri- sonment.
	3	One yeeres prison- ment.

Frie of
fish.

Frie of
fish.

Salmons.
Trouts.
*Loose the fish, and xx.s.
for each offence.*
Assise of
fishes.

Nets.

Angling.

If any person haue taken any Salmons, betweene the feasts of the Nativitie of the blessed virgine Mary, and of S. Martine, in any rivers or waters: Or haue taken yong Salmons at any Mill poole, or other place, betweene the midst of Aprill and Midsummer: or haue at any time cast into any waters any net, by which the frie of any fish may be taken. W.2.cap.48:13.R.2.cap.19:17.R.2.cap.9.

If any person haue with any net, or meane, taken and killed any frie or spaw of any fish, in any wear, fludgate, streame, or riuer, (salt or fresh) or at the tail of any Mill: or haue takē there any Salmons or Trouts, out of season, that is, being kippers, or shedders: Or haue taken and killed any pickerell vnder ten inches fish in length, or Salmon vnder 16. inches, or Trout vnder 8. inches, or Barbell vnder 12. inches: or haue fished in any the said places with any net, but such whereof euery mesh was 2. inches & a halfe brode: But angling is excepted, & so is the taking of Smelts, Loches, Pinews, Binheads, Gudgeons, and Eeles, in places onely where they haue bene vsed to be taken, 1.El.c.18:14.El.c.11.& 27.El.c.11.

If

If any Butcher, Fishmonger, Innholder, Tippler, Brewer, Baker, Poulter, or other seller of victuall, haue not solde the sante at reasonable prices, and for moderate gaines. 23. Ed. 3. c. 6. 13.

R. 2. ca. 8. If any Beerebrewer, or Alebrewer haue solde their drinke at higher prices then haue beene appointed by the Iustices of Peace. 23. H. 8. cap. 4.

If any Butchers, Bakers, Brewers, Poulters, Cookes, Fruiterers; or any mysterie of any of them, haue conspired, or taken any oath, or promise, not to sell but at prices certaine agreed betweene them. 2. Edw. 6. 15.

Offence.

1. Ten pounds, or twentie dayes prisonment.
2. Twentie pound, or stand on pillorie.
3. Fortie pound, or loose one eare and be infamous.

If any Butcher haue solde, or offered to sell, Swines flesh mezeled, or any flesh that died of the moztaine: Or if any other Victualler haue solde, or offered to sell any corrupt or vnrholesome victuall: Stat. Pistorum. cap. 7. 51. H. 3.

Corrupt victuall.

Fine.

If any person haue, against proclamation therof made, transported or carried out of this Realme, any Corne, Graine, or Halte, growing or made here: or any Beere, Butter, Cheese, or Wood in any vessel (except to Burne

Transporte corne, beere, butter, cheese, seafish, hering, wood.

Eg. ii.

wicke,

The owner of the vessell
so loose is:

The owner of the vi-
ctually, so loose she
double value.

The master and mari-
ners, so loose their
goods, and so have a
yeeres imprisonment.

wicke, or the Marches thereof) without
sufficient authoritie, or any Sea fish, or
Herring: not taken by a naturall borne
subject here: or haue by any meanes
conueied, or willingly consented to con-
uey any of the said things, to any vessel
being on the sea, or in any place or Ha-
uen of this Realme to be transported o-
uer Sea, or into Scotland, without suffi-
cient authoritie: or if any person ha-
uing licence to conuey any of the said
things, haue fraughted or laden his ves-
sell, or any part thereof, at any mo pla-
ces then one only: 1. & 2. Phil. & Mar.
cap. 5: 13. Eliz. ca. 11. & 13.

Butter &
cheese.

Forfeits the double va-
lue.

If any person haue bought (to sell a-
gaine) any butter or cheese, vntill it
be in open Faire or Market by retai-
ling it after the weie of cheese and bar-
rell of butter, or after a lesse quantitie:
or vnles it be victuallers for that which
shal be retailed or spent in their houses.
3. Edw. 6. cap. 21: & 14. Eliz. cap. 11:
& 27. Eliz. cap. 11.

Fish pac-
ked.

Bought of
Strangers.

Lose 3. s. 4 d. for each
barrell.

If any person haue packed Fish in
barrells, and haue mixed the countable
Fish with the small Fish, 22. Edw. 4.
cap. 2: 11. Hen. 7. cap. 23: Or haue
bought of a Stranger borne, or out of a
Strangers bottome, any Herring (other
then

then such as commeth hither by reason of shipwracke) not sufficiently salted, packed and casked. 5. Eliz. cap. 5. *Loose the Herring, or the value.*

If any haue brought, sent, or receiued into any ship or bottoine, any rammes, sheepe, Lambes transported. *Rammes, Sheepe, Lambes transported.*

if any person haue procured the same. 8. El. ca. 3. *Loose his goods and his left hand.*

If any person haue dried in this Realme, to be sold, any Fish taken or brought hither by any stranger bozne. *Drying of fish brought by strangers* 13. Eliz. ca. 11. *Loose the fish, or the value.*

If any stranger bozne, haue brought into this realme, any Cods, or Lings, packed in barrells, or other caskes. 13. Eliz. ca. 11. *Cods or Lings in caskes. Loose the fish, or the value.*

If any person haue (within this peere) taken vpon him to set price, to take toll, or to demaund any taxe vpon any Sea-fish taken by any subiect of the Queene in their owne vessels: or if any Purueior or other person haue within that time, by colour of any Commission taken any such Herring, or Sea-fish (other then the accustomed composition fish for Island) against the will of the bringer in thereof: Or if any person haue (within that time) caused to be laden and caried in any vessell (whereof *Set price or taxe vpon sea-fish. Loose the value of the fish. Purueiour. Forfeit the double value. Sea-fish & herring.*

any stranger borne, is wholly or partly owner or master) any fish, victuall, or other thing, from one port or creeke of this Realme, to any other of the same: Or if any person haue within that time brought into this Realme, or any part thereof, other then into the Ile of Man, or into Wales, any wine comming out of the dominions of France, or any *Thoulose Woad*, but onely in such vessell whereof some Subiect of the Queene was then owner, or part owner, 5. Eliz. cap. 5 : & 27. Eliz. ca. 11.

Wine, or
Woad in a
strange
bottomc.
*Forfeits all the wine, and
woad.*

Wines re-
tailed.
*Loose 3. s. 4. d. for each
gallon; and so after
that rate.*

Not aboue
ten gallōs
of wine.
Loose ten pound.

Vtter flesh.
*Loose five pound, and
haue ten dayes pri-
sonment.*

If any person authorized to sel wine by retaile, haue within this peere sold the same aboue the prices thereof limited by the Queenes Proclamation, 5. El. ca. 5 : & 27. El. ca. 11.

If any person, not being the soune of a Peere (or Baron) of this Realme, nor hauing lands or profits to the peerely value of one hundred marks, or goods to one thousand marks, haue kept in his house any vessell of *Gascoigne, Guion, French, or Rochell* wine, containing aboue ten gallons, to the intent to spend the same in his house. 7. Ed. 6. ca. 5.

If any Inholder, Tauerner, Alehouse keeper, common Victualler, common Cooke, or common Table keeper, hath
vtte:

uttered, or put to sale any kind of flesh
 victuall, vpon any day in the time of
 Lent, or vpon any Friday, Saturday,
 or other day appointed by former law
 to be fish day (not being Christmas day)
 except it be to such person, as (resorting
 to such house) had lawful licence to eate
 the same according to the statute there
 of made the fift yeere of her Maiesties
 raigne, 27. Eliz. ca. 11.

If any person (other then by reason *Eate flesh.*
 of age, sicknesse, childing, or licence)

haue within this yeere, eaten flesh in *Loose 3. li. or haue 3.
 moneths prisonment.*
 Lent, or vpon any fishday obserued by
 the custome of this Realme, 2. Ed. 6. ca.

19: & 5. Eliz. ca. 5.

If any common brewer, baker or tip- *Affise of
 ler, haue broke the affise of bread, beere,
 or ale: And if any steward of Leete, or
 officer in market towne, haue taken any
 fine for breach of the affise of bread or
 ale, in such cases, where corporall pu-
 nishment is appointed, 13. R. 2. c. 8.*
ale.

Fine.

If any person haue bought or sold *Weights &
 measures.*

by any vnlawful weights or measures:
 or if any person haue bought or sold in
 any citie or market, with any weight or
 measure that is not lawfully marked
 or signed: 11. Hen. 7. cap. 4. Or haue
 bought corne by heaped measure, in

Gg. iiii.

any

*Of
 fence* *3* { *Loose a no-
 ble.
 Loose a
 marke.
 Loose xx.s.
 and stand
 on pillo-
 rie.*

Fine.

any place (except within shipboord) or haue vsed double measure, the one to buy, the other to sell with, 15.R.2.c.4: 11.H.7.c.4: 5.E.3. *de Pistor.*

Common
weights &
measures.

If they of the towne where the kings Standerd is appointed to remaine, haue not their common weights and measures signed, or haue not thereby signed weights and measures to all that haue required the same: And if the head officers of Market Townes haue not twise yeerely made view and examination of weightes and measures there, 11.H.7.ca.4.

Fine and amerciament.

Vessell for
ale, beere.

If any vessell for Beere or Ale haue bene sold or put to sale, being made of vnseasonable wood, or not hauing thereupon the marke of him that made it: Or if any barrell for beere containe not of the Queens Standard 36. gallons: the kilderkin 18. gallons: the ferkin 9. gallons: euery barrell of ale 32. gallons: the kilderkin 16. gallons, and euery ferkin 8. gallons: 23.H.8.c.4.

Loose 3. 4. d.

Vessels for
wine, ho-
ny, oyle,
herring,
Eeles,
Salmon.

If any haue made or brought into this Realme, any tunne of wine, not containing 252. gallons: or pipe not containing 126. gallons: or tertian not containing 82. gallons: or hogthead not containing 63. gallons: or butte of Malme:

Malmesey not containing 126. gal-
lons: Or barrell of herring not contain-
ing 32. gallons of wine measure: Or
barrel of eeles not containing two and
fortie gallons: or butte of Salmon not
containing 84. gallons: or any kilder-
king, certian, firkins or rundlets, but af-
ter the same rate. 2.H.6.c.11: 1.R.3.
c.13: & 28.H.8.c.14.

Loose the wine, hony,
oyle and fish.

If any haue made any vessel of sope, Vessels of
that being emptie containeth not 32. sope.
gallons for the barrell, 16. for the halfe
barrell, and 8. for the firkin: or waieeth
about 26.li. the barrell, 13.li. the halfe
barrell, or 6.li. and a halfe the firkin, 23.
H.8.ca.4.

Loose 3.s. 4. d. for each
one.

If any Millers haue taken toll by Toll dish.
heaped measure. 31.Ed.1. *de Pistor. & Fine.*
Braciat.

If any Artificers, workemen or la-
bourers, haue conspired or promised to-
gether, or made any oaths, that they wil
not doe their works but at a certaine
price or rate, or but at certaine times,
or but a certaine worke in a day, or that
one of them shall not take vpon him to
finish that which another hath begun. 2.
Ed.6.ca.15.

Artificers
conspiring

1 Ten li. or
have twen-
tie days pri-
sonment,
with bread
and water.
2 Twentie li.
or stand on
pillorie.
3 Forsie li. or
loose one
eare, & be
infamous.

If any person do vse any arte or ma-
nuell occupation, (vled in the fift yeere
of

*Loofe fortie shillings,
for every moneth.*

Arrow-
head
smiths.

*Loofe the heads and be
prisoned, and make
fine.*

Tanners.

*Loofe all the Hides and
skins, tanned by him.*

*Loofe all the leather
tanned by him.*

of this *Queene*) which hath not bene brought vp therein seven peeres (at the least) as an apprentice: or hath set any to worke in it, which is not a workman, or a iourneyman by peere, or hath served as an apprentice. 5. El. ca. 4.

If any Arrowhead Smith haue not well boiled, brazed and hardened at the point with Steele, and marked with his marke, such heads of arrowes and quarrels, as he hath made. 7. H. 4. c. 7.

If any person (during such time as he vsed the mysterie of Tanning of any hide or skin of Ox, Steere, Bul, Cow, Calfe, red or fallow Deere, Goate, or Sheepe) haue vsed also the mysterie of a Shoemaker, Currier, Butcher, or of any Artificer vsing the cutting or working of such Leather.

If any person haue gashed or cut the Hide of any Bul, Ox, Steere or Cow, whereby it is impaired: or if any Tanner haue put to sale any such Hide.

If any person (other then such as at Michaelmasse 1559. had freehold of fortie pound by the peere, or had then any Tanhouse, and did occupie tanning of Leather, or hath bene an apprentise or taught as a hired seruant seven peres to a Tanner, or hath bene wife to a Tanner,

ner, or the sonne of a Tanner, & brought
by foure peres in that arte, or the sonne
or daughter of a Tanner, or such as
hath married the wife or daughter of a
Tanner that left to the same his Tan-
house and Fats) hath tanned any Lea-
ther, or hath taken any profit by the tan-
ning thereof.

If any Tanner haue suffered any
Hide to lie in the Limes longer, then
till the haire falleth off, or may be taken
off, or haue used any other, then Lime,
Culuerdung, Pendung, cold Water, *Forfeits the Hides.*

Wose of cold water, and Okenbarke,
in his Tanning, or haue ouerlimed any
Hides in the pits, or put them in vessels
before the lime be perfectly wrought
out, or haue suffered his Leather to be
frozen with the Frost, or to be parched
with the fire or the Sunne : Or haue
tanned any rotten Hides, or wrought
them negligently in the Wose, or haue
not renewed the Wose so oft as neede
was : Or haue not suffered the Hides
(for vtter sole and clout Leather) to lie
in the Wose xii. moneths, and for the
vpper Leathers nine moneths: Or hath *Loose the hides, or the
value.*
not sufficiently tanned any Hide : Or
hath Tanned any hide of Dre, Steere,
or Cow, otherwise then whole, and
without

without cutting any part thereof away, except three or foure Bends ouerthwart for clout leather: Or haue tanned any Bull hide, Horse hides, or Sheepe skinne: Or haue put any of them to sale, being tanned.

If any person haue put to sale any tanned leather (red and unwrought) vnesse it be sufficiently tanned and dried, and vnesse it be in the places appointed for it, in open Fairres and markets, and vnles it be first searched and sealed: Or haue departed with the hide of Ox, Steere or Cow, but onely whole, without any part cut off, except Bends for clouting leather, as before.

If any person haue bought, contracted for, or bespoken any rough hide, or calues skins in the haire (except salt hides for the vse of ships) but such persons onely as shal take the same: Or shal & may by this act, take the same: Or haue bought or bespoken any tanned leather, not wrought into made wares (other then necks or shreds of sadlers or girdlers) but such persons onely, as wil conuert and worke the same into made wares. 5. Eliz. ca. 8.

Curriers.

If any Currier haue curried any leather, but in his owne house, & that being in a corporate or market towne: Or haue curried any leather not well tanned, or not thoroughly dried after his wet season: Or haue vsed in his wet season any deceitfull means to corrupt the

Lose the hides or value.

Lose all the hides and skins, or the value.

Lose a noble for each offence, except gashing.

the same : D^r haue curried vtter sole leather with any other stuffe then hard tallow, or inner sole, or ouer leather wth any salt stuffe: D^r haue not liquored thē both thorowly : D^r haue burned, scalded, or shauen too thin, or not wrought sufficiētly any leather: D^r haue gashed or hurt any leather by any meanes : D^r haue refused to currie within five daies in Sommer, & ten daies in winter, well and sufficiētly, any leather, by any cutter of leather, or his seruante, bringing with him good stuffe for the perfect liquoring of the same, 5. Eliz. 8.

If any Currier haue (during the time that he hath occupied Currying) vsed the seat of a Tanner, Shoemaker or Butcher, or of *Loſe a noble for each ther Artificer, vsing cutting of leather, hide, or skin.* 5. Eliz. ca. 8.

If any Shoemaker haue made any boots, Shomaker. buskins, shoes, slippers or pantofles, or any part of them of English Leather wet curried, (other then deeres, goates or calues skimmes, dyessed like Spanissh Leather) but of Leather well tanned and curried, or well tanned only, and well sewed with threed well twisted, waxed and rosened, and with the stiches hard drawen, with hard leathers, and without mixing Neats or Calues leather in the vp: *Loſe 3 s. 4 d. for euery per Leathers thereof:* D^r haue put in *paire.* any Bootes, Buskins, Startups, or Slippers (betweene the last of September, & the twen

twentieth of Aprill) meet for any person aboute foure peeres old, any dry English leather (other then calues or goats skins, dressed like Spanish leather:) Or haue shewen for sale, any of his wares vpon the Sunday morning before diuine seruice be ended: Or haue put into any of his said wares, leather made of Sheeps skins, bull, or horse hide, or into the vpper Leather of any Shoes, Startups, Slippers, or Pantofles, or into the neather part of any bootes, (the inner sole and halfe of the shooe, only excepted) any part of the wombe, necke, shanke, flanke, poll, or cheeke: Or into any vtter sole, any other then the best of the Dre, or Steeres hide: or into the inner sole other then the wombs, necke, poll, or cheeke: or in the trefwels of the double soled Shoes, other then the flanks of the said hides, 5. Eliz. ca. 8.

Search
and scale
leather.

*Loose forsie pound for
euery yeere.*

*The appointers so loose
xl. s. for each offence.*

If any lord of Faire or market, haue not appointed two or thre honest and skilful persons, to be searchers and sealers of leather there: And if any the searchers and sealers so appointed, haue refused to scale good Leather: or haue made default in search: or haue concealed any faults, 5. El. ca. 8.

If any such searcher haue not cut the
wombs

Lay causes.

The 4. Booke.

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wombs from the vtter sole leather, truly tanned, before it be curried: or haue not registred the bargains for leather, taking due fees. *ibidem.*

Loose 3 s. 4. d. for each dicker of leather: and so for each dozen of skins.

If any person haue denied any such searcher to enter into any place, to search tanned leather, & wrought ware, or to seise & cary away that which was insufficient: Or if any haue caried out of any Faire or Market, any whole ore or steere hide (whereof any sole leather may be cut) before the wombs be cut off: Or haue put away any tanned leather (red and unwrought) without registering the same, and the price thereof: Or haue bought any tanned Leather, before it was searched and sealed, or haue caried it out of any Faire or Market before it was registred, 5. Elizab. cap. 8.

Loose five pound.

Loose the value of the leather.

If any Goldsmith, or worker of siluer, haue wrought any siluer, that is not so fine in allay as the Sterling, or haue not set his marke vpon his worke before he set it to sale, 2. Hen. 6. c. 14. And if any haue gilded any Sheathes, or any mettall but siluer, sauing the spurs of Knights, and the apparell of a Baron, or such as are aboue that estate, 8. H. 5. cap. 3.

Goldsmiths and gilding.

Forfeits the double value.

Forfeits ten times the value of the thing gilds: and be prisoned one yeere.

If

*Lose ten pound for each
default.*

Lose the wares.

*Tilema-
kers.*

*Lose the double value
to the buier.*

*Lose, for
every*

1000. of plaine Tile,
fine shillings.
100. of roose Tile, a
noble.
100. of corner Tile,
two shillings.

If any Pewterer, or Brasier, haue sold, or exchanged any Brasle or Pewter, but only in open Faire or Market, or in his house, vnielles he were thereto required by the buier: or hath wrought any hollow wares of laie mettall, which is not according to the Assise of the lay mettall wrought in London: or haue not set his seale or marke vpon the sayd ware. 19. Hen. 7. cap. 6: & 4. Hen. 8. cap. 7.

If any Tilemaker haue not digged and cast vp his earth for Tile, till after the first of Nouember, or haue not stirred and turned it til after the first of February folowing, or if he haue wrought it before the first of March folowing, or if he haue not wrought and tried it from stones, beines, and chalke: Or if he haue made, or any person haue put to sale, any plaine Tile vnder ten inches and a halfe in length, six inches & a quarter in breadth, and halfe an inch and a quarter in thicknesse: Or any roose tile vnder 13. inches in length, and halfe an inch and halfe a quarter in thicknesse, with conuenient deepenesse: or any Gutter Tile vnder ten inches and a halfe in length with conuenient thick.

thicknesse, breadth, and depth: And if any searchers appointed for the oversight of the true making of Tile, haue not done their effectuall indenuour & diligence in this behalfe. 17.E.4.cap.4.

Loose x.s. for each default.

If any person haue sold or set forth, candles or other works of ware to sale, at higher price then after the rate of 4.d. for the pound, ouer the common price of plain ware betweene merchant and merchant, 11.H.6.ca.12.

Waxe workers.

Forfeits the works, or the value: and so make Fine.

If any Clothmaker haue not set his seale of lead to his cloth, thereby declaring the iust length thereof, to be tried by the water, 3.E.6.ca.2.

Clothmaking and Dying.

Fine.

If any person haue stretched any cloth aboue one yard & a half in length, or one quarter of a yard in breadth, or haue put to sale, any cloth that hath shrunke more in the wetting then is aforesayd: Or haue stretched any narrow Streite or Kersey, aboue one yard in length, and halfe a quarter of a yard in breadth, or haue put any such to sale that haue shrunke more in the wetting, 5.Edw.6.cap.2.

Loose fortie shillings for each fault.

If any Dyat of Woollen cloth, haue Died any browne Blewes, Pewkes, Catweies, or violets & were not perfectly boyled, grained or maddered vpon the

Loose 20.s. for each offence.

Ph. i.

Woad,

Woad, and shot with good Torker or
Dyhall sufficiently. 3.E.6.c.2.

*Lose fortie shillings for
each cloth, or wooll
sufficiens for a cloth.*

*Lose 20.s. for each of-
fence.*

*Lose 40.s. for each of-
fence.*

Loose them and 20.s.

*Lose a noble for each
yard.*

*Lose the cloth, or the
value.*

*To lose as the offenders
themselves should
lose.*

Loose twentie pound.

If any person haue Died any wooll
for Cloth called Russlets, Warbles,
Grates, Baies, or fith like, or for Hats,
or Caps, vnlesse it were perfectly woa-
ded, boiled, and maddered: Or haue Di-
ed with brazell, to the intent to make a
false colour, in any such cloth or wooll:
Or haue put any Flore, chalke, starch,
or other deceiuable thing vpon any cloth
(except certaine Devonshire and Corn-
wall straighes, 3.E.6.cap.2.) Or haue
occupied any iron Cardes or Picards,
in rowing of any woollen Cloth: Or
haue sold any cloth, by any lesse mea-
sure then after the true content thereof
by the yard and inch: Or haue put to
sale in this Realme, any Cloth (being
pressed) to bee occupied in England,
Wales or Ireland. 3.E.6.ca.2.

If any Querseers of Cloth, appoin-
ted by the Iustices of Peace for this
peere, haue refused to be Querseers, or
haue not within their charge, made due
search thereof once euery quarter: And
if any person haue interrupted them to
make such search, 3.E.6.ca.2.

If any Kentish broadcloth (except
course cloth onely, not exceeding five
pounds

pounds price) haue bene made, that contained not in length betweene 28. and 30. yards, being wet: and in breadth seuen quarters within the lists: and in waight 76. pounds, being well scoured, thicked, milled and fully dried, 5. Ed. 6. cap. 6: & 4. & 5. Phil. & Mar. cap. 5.

Loss 40. s. for ech fault of bredth, or length: and the like for each want of weight, above foure pound.

And so changing it after their rates for other countries, as by those Statutes appeareth.

For regrating of Wools by *Hallifax* men. See 2. & 3. *Phil. & Mar. cap. 13.*

If any person haue vsed, or caused to be vsed, any racking, beating, or casting of any deceitfull liquor, or other meane, with any kind of linnen cloth, whereby the same became deceitful, or the worse for the good vse thereof, 1. Eliz. ca. 13.

Linnen cloth.

Loss the cloth: haue one moneths imprisonment, and pay Fine.

If any owner of any *Scite* or *Prebend*, and demesnes of any late dissolved religious house (that was in peere-ly value vnder two hundred pounds) do not keepe an honest and continual household thereupon, and doe not occupie so much of the said demesnes in tillage, as was occupied by the space of 20. yeeres, before the 27. yeere of K. Henry the eight, 5. Eliz. ca. 2: 14. Eliz. ca. 11.

Scites of religious houses.

Loss 20. nobles for each moneth.

*Flax and
Hemp
Loss 5. for each
fault.*

If any person having in his hands
fiftie acres of arable and pasture toge-
ther, or of the one sort alone, apt for til-
lage, have not within this yeere tilled
and sowed seasonably (without fraud)
one Acre of land with flaxe seede, or
Hemp seed, or both.

But ground in a Parke for Deere, &
Woodland, Grove, Medow, Fell, Fen,
Saltmarsh, Heath, Common grounds
vnapt for tillage, grounds not tilled
within fiftie yeeres before this statute,
and grounds plowed onely for clean-
sing of it, shall not bee accounted in
these fiftie Acres, 24. H. 8. cap. 4. & 5.
Eliz. cap. 5.

*1000.
Sheepe
Loss 3. for every
sheepe more.*

If any person have at one time kept
aboveth the number of 1000. sheepe of all
sorts against the purpose of the statute,
25. H. 8. ca. 1. 3.

*Faire and
Market
for horses.*

*Loss 40. s. for each de-
fault, and answer the
partie grieved.*

If any Owner, Officer or Ruler of
any Faire or Market, have not appoin-
ted one certain open place there, for the
sale of horses, geldings, mares & colts,
and one sufficiēt person to take toll, and
keepe the said place: And if any such
toll gatherer, or his deputie haue taken
any more the one penny toll for one con-
tract, or for entting the names of the
parties, and that in the same place only,
and

and betweene ten of the clocke in the morning, and Sunne setting, 2. & 3. Phil. & Mar. ca. 7.

If any Inholder (dwelling in any Inholder.

Citie, Towne corporate, or Market town, wherein is any common Baker that hath bene apprentice there seven yeeres) haue within his owne house made any horsebread: or (dwelling in any other thowwaire) haue made it in sufficiently, and not of due allse. 13. R. 2. c. 8: & 32. H. 8. c. 41.

Horse-
bread.

Fine.

If any Inholder haue taken any thing for litter: or haue taken excessive-ly for hay, or haue taken about one half peny in a bushell of oates, ouer the common price in the market. 13. R. 2. ca. 8: & 4. H. 4. ca. 25.

Hay and
Oates.

*Lose the quadruple
value of that which
he hath taken more.*

If any person haue bene reteined to seruice to worke for any lesse time then a whole yeere, in any the Arts of a Clothier, woollen Weauer, Tucker, Fuller, Clothworker, Sherman, Dier, Polier, Tailor, Shoemaker, Tinner, Pewterer, Baker, Brewer, Glouer, Cutler, Smith, Ferroz, Currier, Saddler, Spurrier, Turner, Capper, Hat-maker, Feltnaker, Bowyer, Fletcher, Arrowhead-maker, Butcher, Cooke, or Miller. And if any person be-

Seruants
not retai-
nable for
lesse then
one yeere.

The retainer is void.

Refusing
to serue.
Prisoned, till he will
serue.

Prisoned, till he will
serue.

Greater
wages.
Lose five pound.

Testimo-
niall.
Prisoned for 21. dayes:
and whipped then, if
he bring not a testi-
moniall.

Lose 5. li. for each of
fence.

Put away,
or depart
away.
Lose fortie shillings.

Prisoned till he will
continue.

ing unmarried (or vnder thirtie yeres of age, and married). and being compellable to serue in any of those arts, haue refused to serue.

If any person being betweene the age of twelue yeres and threescore, and being compellable to serue in Husbandrie, haue refused to serue in Husbandrie after request thereof made by any person keeping Husbandrie: And if any person haue giuen any wages, contrary to the rates of wages of seruants and Labourers appointed and proclaimed.

If any person retained in Husbandrie, or any the said Arts, haue after his retainor expired, departed out of one li- mite, Towne or Parish, into another, without a Testimoniall: And if any person haue accepted into his seruice, any so departing, without shewing such Testimoniall.

If any person haue put away his ser- uant before the end of his terme, with- out reasonable and allowed cause be- fore a Iustice of the Peace, or at the end of his terme, without a quarters war- ning before giuen: And if any seruant haue departed without such cause be- fore the end of the terme, or at the end thereof,

thereof, without such warning given before two lawfull witnesses.

If any Artificer or Labourer, hired by the day or weeke, haue not continued at his worke so many houres in the day as he ought: Or taking any worke by the great, haue unlawfully departed before the finishing thereof.

If any Seruaunt, Workeman, or Labourer haue wilfully and maliciously made any assault or affray vpon his Maister, or Dame, or other person hauing the charge of such workers or worke.

If any Constable or head Officer, haue not vpon complaint put into the stocks two dayes and one night euery Artificer or person, meet to labour, that hath refused to labour in Haie time or Haruest, for the getting or carrying of Corne, haie, or graine, being thereto appointed by a Iustice of Peace, or such Constable, or head Officer.

If any person haue takē any apprentices against the order of the Law: and if any person haue exercised any Arte, not being brought vpon therein as an apprentice seven yeeres, 5. Eliz. cap. 4. & 5.

Touching the abiding places and collections for the poore, there is no

Vndertake worke, and not finishit

Lose one peny, for each houers absence.

Lose 5. li. and haue one moneths prisonment.

Assault master or dame.

One yeeres prisonment, & other open corporall punishment, not extending to life or limme.

Labour in hay time & haruest.

Lose fortie shillings.

Apprentices.

Lose ten pound.

Poore.

generall order taken in the Shire of Kent, 14. Eliz. cap. 5.

Prisoners
relieued.

Loose fine pound.

Loose fine pound.

Loose fine pound.

If the Churchwardens of any Parish haue not euery Sunday leuied the money for reliefe of the prisoners in the Gaole, and once in euery Quarter paid it to the Constable of the Hundred: Or if that Constable haue not at euery Quarter Sessions paid ouer the same to the Collectour thereto appointed: Or if such Collectour haue not weeke-ly distributed the same for reliefe of the sayd prisoners, 14. Eliz. cap. 5.

Poore set
to worke.

As touching stocks and store of, &c. for the working poore, or houses of correction for the idle poore, &c. little is done in this Shire as yet, but for the most part left to the Parishes, 18. Eliz. cap. 7.

Caps.

Loose 3 s. 4. d. for euery day.

If any person aboue six yerres of age (except maidens, ladies, gentlewomen, nobles, knights, gentlemen of twentie marks by yeere in lands, & their heires, and such as haue bozne office of worship) haue not woyn vpon the Sunday and Holiday (except it be in the time of his trauaile out of the Citie, Towne or Hamlet where he dwelleth) vpon his head,

head, one cap of wooll, knit, thicked, and dressed in *England*, and only dressed and finished by some of the trade of Cap-pers. 13, Eliz. cap. 19.

If any man borne within the Queens dominions (except it be the sonne and heire apparant of a knight, or the sonne of one of higher degree, or such as may dispend xx. pounds by yeere, in lands, Offices, Fees, or other yerely reuenues for terme of life, or be woorth two hundred pounds in goods, or haue bene head Officer in any Citie, Borough or Towne Corporate, or be the Queenes seruauant in Dyvinarie and wearing her Liuerie) haue worne any maner of Silke, in, or vpon his Hat, Bonnet, Nightcap, Girdle, Scabbard, Hose, Shooes, or Spurre leathers: And if any person knowing any seruauant of his to offend herein, haue not (within foure teene daies next after such knowledge) put him out of Seruice, if he were no Apprentice or hired Seruauant, and if he were, then if he haue not put him away at the end of his Terme, or if, hauing put him away therefore, he haue retained him againe within one yeere next after that offence. 1. & 2. Phil. & Mar. cap. 2.

Silke in
apparell.

Loose x. li. for each day.

Loose 100. pound.

The

The Statute of apparell (made 24. H.8. cap. 13.) is not thought altogether meete for this time, as it may appeare by some proclamations published.

Bridges.

If any Bridges in the highwaies (being out of the Cinque Ports, and members thereof) be broken or decayed, to the annoiance of passengers: and if yea, then what Hundred, citie, Towne, Parish, or person certaine, or body politique, ought of right to repaire or amend the same. 22. H.8. ca. 5.

High
wayes.

If the Constables and Churchwardens of any parish, haue not in Easter weeke called their parishioners together, and appointed Ouerseers of the workes for amendment of the High waies, leading to any Market, or haue not appointed the fixe daies for that worke: and if any such ouerseers, haue refused that charge. And if any person (hauing a plow land in tillage or pasture, or keeping a draught or plow) haue not found one waine or cart, furnished to worke eight houres, euery of the sayd dayes: Or if any other person (being assessed in subsidie to five pounds in goods, or fortie shillings in lands) haue not likewise found two able men: Or if

Fine.

Losse 20. shillings.

*Losse 10. s. for euery
draught.*

Losse 12. d. for each day.

if any other housholder or cotager, haue not by himselfe or another, so wrought euery of the same dayes.

If the hedges, ditches, trees, and bushes, in and on each side of any such high way be not kept loto, scoured, and cut downe by the owners of the grounds adioyning : If any such ouerseer, haue not within one moneth after any of the sayd offences done, presented the same to the next Iustice of the Peace : And if any person occuppying land adioyning to any such High way, haue cast the scouring of any ditch thereof into the high way.

Lose ten shill. for each default.

Lose 12.d. for euery rod

If any Bailifes, Constaibles, Surueiours or Churchwardens, haue not leued the forfeitures for the offences aforesayd, and employed them vpon their said high waies, and accounted thereof.

Bailifes and constables to lose 40.s.

Surueiours and Churchwardens to be fined.

2. & 3. Phil. & Mar. 8. 51 Eliz. ca. 13. 18. Eliz. ca. 9. & 27. Eliz. ca. 11.

If any Occupier, Owner or Farmer, of any Iron worke: whatsoeuer, that hath caused any Cole, Wate, or Iron, to be caried in any Cart or Waine, for such Iron worke at any time in the peere (betweene the 12. of October, and the first of May) by the space of one mile through any Highway lying vnder

High wayes.

*Loose ten shillings for
each default.*

der the hils of this Shire called the Northdownes, hath not also yerely caused to be caried and laid (for euery five loades of Cole or Hing, and for euery tunne of Iron so caried) one vsuall cart load of sindar, grauell, stone, chalke or sand, meet for the amending of the sayd high way, as hath bene appointed by any Iustice of Peace (neere to the place) for him to do: Or els hath not paid in allowance for euery such load of sindar, grauel stone, sand, or chalke, the summe of 2. s. 6. d. vpon lawfull demaund thereof. 27. Eliz. ca. 19.

*Vnlawfull
games.*

*Loose fortie shillings for
euery day.*

If any person haue (for lucre) maintained, or kept any common house, alley, or place of bowling, coitting, closs, railles, tennis, dicing, tables, carding, shoue grote, or any other game prohibited by any former Statute (as football and casting of the stone) or any other vnlawfull new game now inuented: If any Artificer of any occupation, or any Husbandman, Apprentice, Labourer, seruant at Husbandrie, Fornerman, or any seruant of Artificer, or any Mariner, Fisherman, Waterman, or Seruingman, (other then of a Noble man, or of him that may dispend one hundred pounds by yere, playing with

*Loose 6. s. 8. d. for euery
time.*

in the precinct of his masters house) haue plaied out of the Chyrtmasse at any of the said vnlawfull games, or in the Chyrtmasse out of the house or presence of their master. 33. Hen. 8. cap. 9: & vide 12. R. 2. ca. 7. 8. 10.

If any person haue shot in, vled or kept any handgunne, but such as is in stocke, and gunne one yard long: or any hagbut, or demphake, not being three quarters of a yard long. 33. Hen. 8. cap. 6.

Crosse-
bowes, &
Gunnies.

Loose 10 li. for every
offence.

If any person (not hauing one hundred pounds reuenue by the yere) haue caried in his iourney any Crossebow bent, or gunne charged, vnesse it be to the Musters: If any person haue shot at large (other then at a But or Banke of earth in place conuenient) at any thing with any gunne, in any citie, borough or market towne, or within a quarter of a mile of any of them, or haue commaunded his seruiaunt to shoote in crossebow or gunne, at any thing (other then a Butte or Banke of earth) Or if any person (not hauing an 100. li. by yere, or not dwelling within five miles of the Sea coast, or not dwelling in a house two furlongs distant from any Citie, Borough or Towne,) do keepe
or

Loose 10. li. for each
offence.

of haue in his house any Crossebowe,
33. H. 8. cap. 6.

But such as are charged to finde a
gunne by the statute (4. & 5. Philip &
Mar. cap. 2.) and their seruants, may
shoot at a Butte or Banke, and at their
owne proper games, so that they cary
not the same in a Highway, except it
be going to or from the *Musters*, or to
or from the defence or Seruice of the
Realme.

Lose fortie shillings,

If any person (hauing an hundred
pounds by yeere, and hauing seised a
ny Crossebow or Gunne by vertue of
this Acte) haue not broken the same in
pieces within 20. dayes next after such
seisure: *ibidem*.

Archerie.

Lose 6. s. 8. d. for each
bowstasse.

If any Marchant stranger, being of
any countrey from whence Bowstaues
haue bene or ought to be sent into this
land, haue not (for euery tunne weight
of burden that his vessel containeth)
brought hither foure Bowstaues. 12.
Edw. 4. cap. 2: 33. Hen. 8. cap. 10:
& 37. Hen. 8. cap. 7: & 13. Eliz. c. 14.
and for euery Butte of *Malmesie* tenne
Bowstaues. 1. R. 3. cap. 11.

Lose 13. s. 4. d. for each
Butte.

Archerie.

If any man being the Queenes sub-
iect,

iect, and not hauing reasonable cause or impediment, and being within the age of sixtie yeeres (except spirituall men, Iustices of the one Bench or other, Iustices of Assise, and Barons of the Exchequer) haue not a long bow and arrowes readie in his house, or haue not vsed shooting therein: or haue not for euery man child in his house (betweene seven yeeres and seuentene of age) a Bow and two shafts, and for euery such being aboue seuentene yeeres, a Bow and foure shafts, or haue not brought them vp in shooting: If any man vnder the age of foure and xx. yeeres, haue shot at standing pycks: or (being aboue that age) haue shot at any marke vnder eleuen score yards with any pyckshaft, or flight.

Lose 6. s. 8. d. for each moneth.

Loose 6. s. 8. d. for euery shot.

If the Inhabitants of any Towne haue not made and continued their Butts as they ought to do.

*Buttes.
Lose 20. s. for euery three moneths.*

If any Bowyer haue not for euery Bowe that he made of Ewe, made also foure other bowes of apt wood to shoote in: Or haue not sold his bowes for all ages, at their due prices: If any stranger bozne, not being a Denizen, haue vsed to shoote in a long Bowe, without the Queens licence: or haue coueied out of her

Bowyers.

Lose 3. s. 4. d. for each bow that shall want.

Lose his bow & arrowes

Loose them, and haue
prisomment till he
make fine.

Armour.

Loose for
3. moneths
want of

Horse or gelding, ten
pound.
Demilance and the
furniture, 3. li.
Corflet, 20. s.
Bowe, sheafe, and
skull, 10. s.

Horse, for
apparell.

her Maiesties dominions, any long
Bow or Shafts, without such licence.
33. H. 8. ca. 9.

If any temporall person, hauing e-
state for life in freehold lands, or tene-
ments, to the value of 200. li. by yeere,
or vnder, and not aboue 400. li. Or (not
being otherwise charged) and
hauing fees, annuities, or co-
pyhold lands, for life to the
value of 30. li. or aboue, or ha-
uing goods to the value of 100.
li. or by ward, haue not & keep
not in a readinesse, such Hor-

ses, Geldings, Weapon, Armour, or o-
ther furniture for the wars, as after the
proportion of his abilitie he ought (by
the Statute thereof made) to haue and
keepe. 4. & 5. Phil. & Mar. ca. 2.

If any temporall person of full age
(whose wife not being diuorced, nor
willingly absenting her self from him,
doeth weare any gowne or petticoate of
silke, or any beluet in her kirtle, or in a-
ny luying or part of her gowne (other
then in ruffes or pursles) or any French-
hood or Bonet of beluet with any habi-
liment, passe or edge of gold, peatle or
stone, or any chaine of gold about her
necke, or vpon any her apparell) haue
not

Lay causes.

The 4. Booke.

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not found and kept a light horse furnished, except he haue bene otherwise charged by the Statute to find horse or gelding. 33. H. 8. cap. 5: 4. & 5. Phil. & Mar. cap. 2.

Lodse 10. li. for euery
3. moneths want.

If the inhabitants of any Parish, Towne or Borough, haue not, or keepe not such common armour and furniture for the warres, as haue bene appointed for them by the Commissioners thereto assigned. 4. & 5. Phil. & Mar. cap. 2.

Common
armour.

Lose for euery 3. months
after the rates be-
foresaid.

If any person being generally or specially commanded to Muster before any (hauing authoritie for the same) haue without true and reasonable cause absented himselfe, or haue not brought with him in a readinesse, his best furniture of array and armour for his owne person. 4. & 5. Phil. & Mar. cap. 2.

Musters.

Haue ten dayes prison-
ment, or pay 40 s.
fine.

If any person (authorized to Muster, or to leuie men for the Queenes seruice in warre) haue taken any reward for the discharge or sparing of any person from that seruice: or if any person hauing charge of men for warrefare, haue not paid to his souldiours their whole wages, conduit, and rote money, or haue for any gaine licenced any of them to depart out of the seruice. 2. Ed. 6. cap. 2.

Captains.

Lose ten times so much,
or 20. li.

Lose ten times so much,
and so the souldiour
treble so much as is
not paid.

Item.

If

Souldiors.
Prisonment, til he make
satisfaction.

If any souldior seruing the Queene in her warres, haue giuen away, wilfully purloined, or put away any horse, gelding, mare, or harnesse, where with he was set forth, 2. & 3. E. 6. ca. 2.

Conuey
Horses, &c

If any person haue conueied, sold, or giuen into any place beyond the Sea, out of the Queenes dominions, or to any Scottishman, to be conueyed into Scotland, any horse, gelding (or mare above x. s. price) without the Queens licence vnder great her seale or priuie signet, wilelle it were to serue the Queene in her warres. 1. E. 6. cap. 5.

Forfait the horse, mare
or gelding, and lose
fortie pound.

Horses &
Mares for
breed.

If any person haue put to feed in any Forrest, Chace, Moore, Parish, Heath, Common or wast ground, with in this shire, where any mares are vsed to be kept, any stoned horse, being aboue two yerres old, and not being fourteene handfuls high, betwene the lowest part of the hooft, and the top of the wither: If any such Forrest or grounds, haue not bene verely driuen within 15. dayes after Michaelmas by the owners or officers thereto appointed, 32. H. 8. ca. 13.

Forfeit the horse.

Lose 40. s. for every
time.

Note the Fennie places that be excepted by the Statute. 8. Eliz. ca. 8.

Sea watch
Fine.

If watches haue not bene made vpon the Sea coasts in such places, and with

with such number of people, and in such
maner as it was woont to be. 5. H. 4.
cap. 3.

The Statute of sleuying the wages *Parlia-*
of the knights of the parliament (made *mens.*
23. H. 6. ca. 11.) hath no common vse,
and is therfore pretermitted.

Note also, that these Statutes follow-
ing, are to be openly published
at any Sessions of the
Peace. viz.

The Statutes (36. E. 3. ca. 2. 3. & 4.) *Purueiors,*
shall be proclaimed by the *Iustices* of
Peace euery yeere, and thereof to en-
forme the people. 23. H. 6. ca. 2.

All former Statutes for victuallers *Victnallers,*
being in force shal be proclaimed two
times yeerely, in the *Sessions* of *Iustices*
of the Peace. 23. H. 6. ca. 13.

The Acte for *Archerie* (33. H. 8. ca. *Archerie,*
9.) must be proclaimed at the seuerall
Sessions of the Peace.

Of the Enditements, and Presentments, giuen by the Iurors :
and of the Matter and Forme,
and receiuing, and reic-
ting of them.

CAP. V.

The preparation to this Enquirie thus made, let vs goe neerer, and looke also into the performance of the same.

The vnderstanding (or knowledge) which the Iustices of the Peace do take by the trauel of these Enquirors, is by the meane of their report, put in writing, and commonly called, an Enditement or Presentment: betwene the which two words (howsoever they be confounded, or not rightly distinguished, in common speech) me thinketh that there doeth easily appeare a true and certaine difference. If or, I take a Presentment to be, a meere denunciation of the Iurors themselves, or of some other officer (as you shal hereafter heare) without any other information: and an Enditement to be, the Verdite of the Iurors, grounded vpon the accusation of a third person: So that a Presentment, is but a declaration of the Iurours (or Officers) without any bill offered before: and an Enditement is their finding of a Bill of accusation to be true.

Presentment,
and Endite-
ment.

The

The one seemeth to come of the Greeke
Ενδεικτωρις, I accuse: the other of the French
Presenter, to offer vnto a man, or to set before
 him.

Some extend the word Enditement to Felonies, and other Capitall crimes: and Presentment, to Nusances & such inferiour faults onely. But, taking them at aduenture, (as others doe) let vs consult with our bookes, that we may learne by them, what points be requisite to the making of a good Presentment or Enditement.

An Enditement therefore, ought to be the Enditement.
 Verdite of Jurors that be charged to enquire of that offence which is presented by them. For, if A. be endited of stealing the goods of B. and pleadeth thereto Not guiltie, and the Iurie findeth that C. stole the goods, and that A. tooke them from him, but not Feloniously: This Verdite shall not stand for an Enditement against C. because that Iurie had no charge to enquire generally who did the Felonie, but to try specially whether A. were thereof guiltie or no. 13.E.4.3.

But if A. be arraigned vpon an Enditement of murder (taken before the Coroner) and is found Not guiltie: now, the Iurie ought to find, who is guiltie thereof: and if they say, that C. killed the man, that verdite shall serue for a good Enditement against C.

¶ i. iii.

because

because the Iurie had taken so much into charge, *ibidem*.

This also is generally true, that all Bills, Informations and Enditements grounded vpon penall Statutes (wherein the Prince only is to reape the forfeiture) ought to be commenced within foure peeres next after the offence committed: and if the suite be giuen to any other person, for himselfe and the Prince, or for himselfe onely, that ought to commence (for the Prince) within two peeres, and (for euery common person) within one peere, next after the offence done: And otherwise it is meere void: vnlesse it be otherwise limited by that speciall Statute vpon which the Information, Enditement (or presentment) is made and framed, 7.H.8.cap.3.

Furthermore, all enditements, (forasmuch as they be in the nature of a declaratiō) ought to containe certaintie, and therefore (as saith *D. Marrow*) five principall things be (most commonly) requisite in presentments before the Iustices of Peace. (*videlicet.*)

1 The name, surname, and addition of the partie endited:

2 The peere, day, and place, in which the offence was done:

3 The name of the person, to whom the offence was done:

4 The name & value of the thing, in which the

the offence was committed:

5 The maner of the fact, and the nature of the offence: as the maner of the treason, murder, felonie, or trespasse.

The name and surname of the partie endited must be certainly expresse: and if the Enditeiment be of an Accessarie in Felonie, the name of the principall must be set downe also. For if the Enditeiment be, *quod A. mandauit cuidam ignoto occidere B. id quod fecit*, this is vicious: but in treason, trespasse, or maiheime, where all be principals, it may be, *quod procurauit personas ignotas*, to doe the treason, trespasse, or maiheime, Marr.

The name & surname.

Besides the name and surname of the partie endited, there ought also (by the Statute) (1. H. 5. c. 5) in euery presentment wherein pro- cesse of vclawrie lieth, to be added, his estate, degree, or mysterie, and the Countie, Towne, Hamlet, or Place, where he is, or was comersant. And euen so ought it to haue bene at the Common lawe also, as touching names of dignitie, made by creation, as Duke, Marques, Earle, Vicount, Archbishop, Bishop, Knight, or Serieaunt at the law, because euery of these titles were accounted parcell of the name: But it was not so, for the names of Baron, Banineret and Esquier, (which are but names of dignitie without creation,) nor for Chancellor, Treasurer, Chamberlain, Shirif,

Addition of estate, degree, &c.

Coroner, Escheator, Bailife, Deane, Archdeacon, Deacon, Prebendarie or Parson (which are names of dignitie by reason of office onely) vnlesse the Presentment did charge them in respect of their offices: for then the name of office also (as Bailife or Escheator) ought to be vsed in the Enditement. Marrow.

Degree, or
mysterie.

But now, Baron, Knight, Esquier, Gentleman, Alderman, Widowe, Singlewoman, Deane, Archdeacon, Parson, Doctor, Clarke, Parish Clarke, are good Additions of estate or degree, (as I take it) within the meaning of this Statute of Additions: But Farmour, Seruant, Butler or Chamberlaine are not, because they be common to gentlemen and yeomen, and thereby vncertaine. So Chopchurch, Merchant, Grocer, Mercer, Taylor, Broker, Husbandman, Hosteler, Labourer, Lighterman, Waterman, Spinster: &c. be good Additions of mysterie. But Citizen is not, because it is no mysterie, arte or degree: Neither is Extortioner, Maintainer, Vagabond, Heretike, Diccar, Carder, or such like, any good addition: because they are euery one euill, and against the law.

And this part of the Addition of estate, degree, or mysterie, must alwayes be knit to the proper person: For, *Sybilla Batt. nuper de T. in comitatu Eb. vxor Ioannis Batt. nuper Spinster*, was reiected: because Spinster was more

pro-

properly to be referred to Iohn (which is the last Antecedent) then to Sybilla. *Collect.*

Dyar. 47.

Also by the said Statute (as I said) the Place. Addition ought to comprehend the Countie, and the Towne, Hamlet or place (known out of any Towne or Hamlet) wherof the partie is, or was: So that if there be diuers Hamlets in one Towne, he may be named either of the Towne or Hamlet: But if he be named of a place known, and the place be within a town, then he must be named of the Towne, 35.H.6. 30. And if both the Towne and the parish do beare one name, he may be named of the one, or of the other of them: But if there be two Townes in one Parish, then he ought to be named of the Towne, and not of the parish, 5.E.4. 129: 22.E.4. 2: & 22.H.6. 41.

An Enditement against A. the parson of Dale, is not good, without naming the place of his abode: because he may lie at an other place then where his benefice lieth. 25. Eliz.

Cur. Reap. Crompton.

As for the *Alias Dictus*, (which is often *Alias dictus.* put in the Addition) the vse thereof is chiefly in Writs, grounded vpon especialties, and to make the writ and the writing to agree. For (as touching Enditements) if the partie be not well named, both for his name of Baptisme, Surname, Hysterie, or degree, & place,
at

at the first: then cannot the *Alias dictus* make that good which was euill before.

And it appeareth (1.E.4.2: & 2.E.4.1.6) that the Addition of the degree or mysterie must alwaies be such as the partie hath at the very time: But the Addition of the place may be of such, where he was at any time before, so that then the word *nuper* be vsed with it.

Furthermore, the Enditement must containe the day, yeere and place in which the offence was committed. 8.E.5.8: 2.H.7.7: & 25.E.3.43. And therefore, if the Enditement suppose it the x. day of March, without any more, that is not good: But if it be the x. day of March last past, without shewing in what yeere, that is good enough: for the certaintie may be found out by the Stile of the Sessions. So if it be the tenth day from Easter, Anno 23.Eliz. that is good: Likewise if it be in the Vras of the holy Trinitie: and it shal be there vnderstood to be the very day of the Vras (*videlicet*) the eight day after the Feast, and not *Quarto die* after the Vras: But if it be *In festo Sancti Petri*, it is not good, because there be diuers Feasts of Saint Peter, and none without addition, saith 3.H.7.Fitzh. Enditements. 22.

If the Enditement be, that A. stroke B. 19. die Maij, anno Regina nunc. 29. wherof B. is anguished untill the xx. day of the same moneth,

quo

quo quidem 19. die, he died of the same stroke : this is faultie, because it ought to be, whereof he died the said 20. day, &c.

If it be *29. die Februarij*, it is good inough in the Bissextile (or Leape yeere) which hapneth once in euery foure peeres, & which asoordeth 29. dayes to that moneth. But if it should be, of a day and yeere, which is not then come, there is no reason to thinke it good.

If it be *Anno Domini millesimo quingentesimo octuagesimo septimo*, the yeere shall be accounted after the computation of the Church of England, and not *Stilo nouo*, as it is now at Rome, and in other Countries abroad. If the offence be done in the night before midnight, the Enditement shall suppose it to be done in the day before : and if it happen after midnight, then it must lay it to be done the day after. If it be *In Festo* of any Saint, it shall bee construed to bee in the very day of the Feast, and not in the Eue. But if the Presentment bee in the Negatiue, or in the affirmatiue (rising vpon a Negatiue) as that A. hath not scotwed such a Sewer, or that by the not scotwing thereof such Hedowes be drowned, in these cases there needeth no yeere, nor day. Marrow.

But, as a man may be too negligent, in omitting or not hitting the time : So also may he bee ouer curious in doubling it without cause :

cause : for if he frame the Enditement, that A. stole certaine goods, such a day, and such an other day, that is faultie, and uncertaine, because one Felonie cannot be twice committed. 2.H.7.7.

Place.

And not onely this certaintie of the time, but that of the Place also must be contained in the Enditement : for it was adiudged (25. E. 3.43.) that a man should not be put to answer to an enditement of killing the Kings Deere, because there was no place named, in which the offence was done. So an Enditement supposing a Felonie to be done in such a place of such a countie, where in trush there is no such place in that Countie, is meere ly word by the Statutes, 9.H.5.ca.1 : & 18.H.6. ca.12.

If a man being stricken in Middlesex, had died thereof in Essex, the bookes, 3. H. 7. 12 : 4.H.7.18 : 6.H.7.10 : 7.H.7.8 : 10.H.7.28 : & 11.H.4.&c. did not agree, in which of these Counties he should be endited. But the Statute (2.& 3.E.6.ca.24.) taketh order, that if the stroke (or poisoning) happen to be in one Countie, and the death in an other countie, the Enditement in the Countie where the Death is, shall be good : and likewise, that if a murder, or felonie, be done in one countie, and a man becommeth Accessarie thereto in an other countie, the Enditement against the Accessarie shall be good in that countie wherein he

he becommeth Accessarie.

Where (by the way) you may see in plaine words of this last Statute, that Iustices of the Peace may take Enditements of Murder, as of Murder, though M. Fitzh. (Fol. 17) deny it, saying, that they cannot enquire of Murder saving onely as of Felonie, or Manslaughter.

And you shall read of an Enditement of Murder, (before them) received 3. H. 7. 5: agreeable wherunto was the opinion of Hales and Portman, Iustices, as I haue seene in a Report of Dalison Iustice.

And of the same mind also were the Iustices of the Kings Bench, 6. E. 6. Collections Dyar. fol. 69.

If a man be robbed by the high way in *Middlesex*, and apprehendeth the theefe by Huy and Cry in *Essex*, hauing the goods about him: ~~Nota~~ may that theefe be endited of Felonie in *Essex*, but not of Robberie by the high way: for he is a Felon of those goods where soeuer he shall be found with them: But he is no robber by the way, saue onely in that shire where the way is. *Et debet* (saith D. Bracton) *quisq; inri subiacere, ubi deliquit.* Albeit the Statute (25. H. 8. cap. 3.) hath now equally deppriued him of his Cleargie in both the Shires.

The certaintie of the name of the person to whom the offence is done, is also in most cases required.

The name of the person offended.

requisite. But yet, if the Enditement be, *quod bona & catalla cuiusdam hominis ignoti felonice cepit, or quendam ignotum felonice depradavit*, it is good, because of the Queenes advantage of forfeiture thereby. Fitzh. enditement. 12. And by the opinion of Rede and Fineux, *trin.* 12. H. 7. (reported by Dyar 285) an Enditement of Affray and assault, *in quendam ignotum*, is good inough, because the partie is at no mischief thereby, seeing that if he should be afterward endited of that offence by the very name of that person (supposed in the first Enditement to be unknowen) yet might he helpe it by taking auerrement, that it was the same and none other offence.

You may see an Enditement (Fitz. Endit. 9.) *quod A. verberavit, & 20. laccos praij, &c.* was thought sufficient, without shewing to whom the lacks did belong: wherat M. Stanford (Fol. 95.) marueileth, saying that he saw no cause why it should be good, unlesse it were for that the matter could not be made more certaine. But peradventure certaintie in Enditements, was not in those daies thought so needfull, as now it is holden.

If the goods of a Parson of a Church be taken, the Enditement must be, *bona rectoris*, and not *Ecclesie*. And if the goods of the Church, then *Bona Parochianorum, in custodia* *guardianorum, & not bona Ecclesie*: 37. H. 6. 30.

If

If they bee the goods of a Maior and Communalitie, and the Maior dieth before the Enditement, then it shall be *bona communitalis*, saith Marrow: but enquire of that, because they haue no such name of Corporation.

If the Enditement be, *quod A. verberauit B. & unum equum praeij 20. solid. felonice cepit*, and doth not say, *ipsius B.* yet it is good inough: 30. H. 6. Fitzher. Endit. 9: But if it be, *quod unum equum praedicti I. cepit*, and there were no mention of I. before, then it is voyde. 9. Edw. 4. 1.

If the goods of a man be taken, and he maketh his executors, and dieth, the Enditement shall be, *bona testatoris*: but if they were taken after his death, it shall be, *bona testatoris in custodia Executorum existentia*. If the Enditement be, *quod A. furatus est tunicam hominis ignoti, quem inuenit mortuum*, that is not good, 11. R. 2. Fitz. Endit. 15. If a man take away a roate armour, which hangeth ouer a Tombe in a Church, the Enditement shall say, *bona executoris*, of him whose Tombe it is: but if a graue Stone be taken away, the enditement shall be, *bona Ecclesia*: Marr. If my goods be taken by a Trespassour, and another taketh them from him, the Enditement shall be, *bona* of him which had the last possession. But if I baile goods to one, frō whom they be robbed, then

then it shal be, *bona* of me in his keeping, Mar.
If an Enditement be, *Bona Capella in custodia*, &c. or *bona Domus*, or *Ecclesia tempore vacationis*, it is good. 7.E.4.14.

The name of
the value of
the thing.

The name (and value) of the thing in which
the offence is committed, ought also to be com-
prised in the Enditement: for an Enditement
of the taking *bona & catalla*, whether it be in
Trespasse or Felonie, is not good, for the un-
certaintie what goods they be: And if it be of
dead things, it may be *bona & catalla*, expres-
sing the names thereof in certaintie: But if it
be of things liuing, it shall not say, *bona & ca-
talla*, but *equum, bouem, ouem*, &c.

Againe, the value (or price) of the thing is
commonly to be declared: in Felony, to make
it appeare from petit Latrinie: and in Tres-
passe, to aggravate the fault and fine: But yet
an Enditement of the taking of Beastes *ferre
natwa*, as Deere, Hares, Partridges, or phe-
sants, is not good, unlesse they be taken in a
Parke or Warren, that be liberties, 8.E.4.9.
So of Charters; because their value cannot
be esteemed.

In all cases (sayth M. Marrow) where the
number ought to be expresse in the Endite-
ment, there also it must be sayd, *Prati*, or *ad
valentiam*: as if it be of the taking of doves,
in a douchouse, or young Hawkes in a Wood:
And where it is of a liue thing or things, it
must

Prati, & not
ad valentiam.
&c.

must be *praty*: and so of a dead thing in the singular number: but if it be of dead things in the plurall number, then it must be *ad valentiam*, and not *praty*. Againe, if it be of a dead thing that goeth by weight or measure, the forme is to say *praty*, and not *ad valentiam*.

If the enditement be of taking away coine, which is not currant, it shall say *praty*: otherwise it is of money currant, because that carrieth his value and price with it. If it be *quod proditorie fecit grossos, vel denarios*, it shall be *ad valentiam*, and it shall not say, *2s. libras in denarijs*, or *in pecunia Domini Regis*, but *ad instar pecunie Domini Regis*. Mar.

Sundry other daintie and nice differences doth M. Marrow make, where a man shall say *praty*, and where *ad valentiam*, binding the Enditement to that rule which the Register taketh for the originall Writts of Trespasse: But forasmuch as Nele (9. Ed. 4. 26.) saith, that enditements be not tied to that forme, and because that rule of the Register is not very constantly obserued in Trespasse it selfe (as a thing not materiall, in the opinion of M. Fitz. in his Nat. Bre. Fol. 88.) I thought it best to make choise of these (that I haue) for publique vse, and to leaue the rest for priuate learning.

To the further certaintie of the enditement, the very maner of the fact it selfe, and the nature of the offence, ought to be mentioned also: The maner of the fact, and nature of the offence.

for if the Enditement be, *quod A. captum pro feloniam, felonice & voluntarie ad largum ire permisit*, this lacketh the certaintie for what felonie he was taken, and is thereby void, 8. E. 4. 3. And so, if the Enditement be, *quod felonice fregit prisonam apud A.* and doe not shew for what Felonie he was imprisoned there. So, if it be, that a man made 100. shillings of Alchimie *ad instar pecunie Domine Regine*, and do not shew like to what money, as groates, or shillings, &c. it is void, Fitzh. Endit. 10. And therefore, in Murder or Manslaughter, it doth well to expresse the stroke, whereof the death ensued. Collect. Dyar. 99.

If the Enditement be, that A. spake such words against the Queene, and lay the downe incertaine, *vel hys similia*: it is void for the incertaintie. Brooke *action sur case*. 112. And if it be, that A. and B. *manu forti intraverunt in tenementum, &c.* that also is insufficient for the like incertaintie: because the word *tenementum* may as well extend to a house or cottage, as to land, medow, pasture, &c. Dalyson.

So, if the Enditement runne thus: *Apud C. in comitatu predicto insultum fecit, & ipsum cum quodam cultello, precij &c. felonice percussit, & ex malitia sua precogitata murderavit*: it is not sufficient, without shewing the place where he murdered him, which may be in some other place then where he assaulted him. Collect.

Dyar.

Dyar. 69. And an Enditement of selling tanned leather, was disliked (1. R. 3. 1.) because it neither contained the place where, nor the person to whom the leather was sold, both which be materiall and trauersable.

If the Enditement be, that a man is a common cheefe, without shewing especially in what thing, it is nothing worth, 22. lib. Ass. Pl. 75. & 29. 45. And so, if it be of a generall extortion against an Ordinarie, without shewing in what, by 25. E. 3. Stat. 3. cap. 9. And so also, if the Enditement stand vpon these termes onely, *Insidiatores viarum, & depopulatores agrorum*, by 4. H. 4. cap. 2. And thereupon the Court sayd, (17. Ed. 4. 4.) that vpon such an Enditement, the partie shal be dismissed. Now be it, the Commission of the Peace hath the words, *in insidijs iacuerint*, but it goeth further, *ad gentem nostram* mayhem and am.

Neither is it good in an enditement against an Accessarie, to say, that hee receiued the goods without telling, that he receiued the Felon, 27. lib. Ass. Pl. 69: 9. H. 4. 1: & 25. Ed. 3. 39. nor to say, that he *sciens felonem dominæ Regina apud A. recepit*, without shewing what Felonie he committed, 7. H. 6. 65. nor without telling, that he (knowing it) receiued him feloniously, 7. H. 6. 42. vnesse he receiue one that is attainted of felonie in the same Countie: for then he must at his perill take know-

ledge of the Attainder, and so no such mention of knowledge needeth to be vsed, as it is holden 8.E.4.3. But enquire thereof.

And if such an Enditement be, *Sciens ipsos quatuor homines feloniam, &c. fecisse apud D.* felonice recepit, it is not good, for that it sheweth not, which of them he receiued 30. H.6.2. And yet, if foure be endited iointly, then are they also each one seuerally endited thereby, 6.E.4.5. Markam.

Nature of the offence.

Concerning the nature of the offence, this is to bee obserued: that in an Enditement of treason (presentable before the Iustices of Peace) the word Proditorie ought to be vsed: In the Enditement of Murder, *murdravit* is necessarie, 9.E.4.26: and that word alone implieth *ex malitia pracogitata*. Collection Diar. 69. But if without *murdravit*, it be *quod A. occidit B. ex malitia pracogitata & voluntarie*, it is not inough, because one man may kill another so, in a Wager of Battaille, and yet be no murderer. And for the same reason, if it be of Manslaughter, it must be *Felonice*.

An Enditement was, that the sonne had taken the sicke father, and caried him into the cold weather, wherof he died, but it was disallowed because it lacked *Felonice*. Fitz. Endit. 3. Againe, if the Enditement be of Burglarie, then it must be *Burglariter, or ea intentione ad feloniam, sive murdrum faciendum*: for it is not inough

inough to say, *Felonice fregit domum mansio-
nalem in nocte*. And if it be of Rape the it must
say, *Felonice rapuit*, for (without *rapuit*) it suf-
fiseeth not to say, *Felonice cepit Aliciam & eam
carnaliter cognouit*. 9.E.4.27: & 17.H.4.12.

If it be *Furatus est*, it seemeth to Marrow
to be good without the word *felonice*, but 18.
E.4.10. is against him.

If it be *felonice abduxit unum equum*, it is
not of value without saying, *cepit*, neither is
cepit good alone, without *abduxit*: for it must
be *felonice cepit & abduxit*. Fitzh. Endit. 2.
And if it be, *felonice succidit arbores & illas a-
sportauit*: or, *vi & armis succidit arbores & fe-
lonice asportauit*, neither of them will make it
Felonie, because the trees be a part of the free-
hold, whereof no felonie can be committed:
12.lib. Ass. pl. 32. But if it be, *vi & armis suc-
cidit arbores & eas felonice* (at an other day af-
ter) *cepit & asportauit*, that will make it Felo-
nie, as I haue said already. And if the Endite-
ment be of petite Larcenie, it ought to haue
felonice in it. 27.H.8.27.

And albeit the Enditement be but of a
Mauhemie, it must say, *felonice mayhemauit*,
and yet mauhemie is no Felonie, but an hai-
nous, & (as it were) a Felonious trespasse. But
where in an Enditement of Felonie, the word
felonice wanteth, there the Enditement may
neverthelesse stand good to make it a trespasse

2.H.7.7: 6.H.7.4: & 18.E.4.10.

And in an enditement of Trespasse or felonie, it seemeth that the words *contra pacem* ought to be yet used: But the necessitie of the words, *vi & armis*, (viz.) *cum baculis, cultellis, &c.* be taken away by the Statute, 37.H.8.c.8. Reuerthelesse M. Stamford (Fol. 94.) is of the opinion, that it is not amisse to vse those words, so long as the circumstances of the fact require them: for (saith he) The circumstances of an acte, doe either aggravate or diminish the offence therein.

If the enditement be of forcible entrie, then the words *vi & armis*, be needlesse, because they are necessarily implied in the worde Force, Marr. And if the Enditement be founded vpon a Statute, it ought to say, *contra formam Statuti, in huiusmodi casu promiss, ac editi*: or (where many Statutes doe concerne one offence, as in the case of Lueries and such like) *contra formam diuersorum Statutorum*, without speciall naming of any: and then the best that be taken for the Queene. But an Enditement of a Riot, without saying *contra formam Statuti, &c.* is not good, as may appeare in the Trauerse (cap. 13.) following, because it is no Riot, but by that statute. And yet it is not of necessitie, that the Statute be verbally rehearsed, but only that the offence against the Statute be sufficiently and with full words descri-

described, *Comment. 1. c. 79.*

In the 11. yeere of Queene Elizabeth, a man was endited upon the Statutes (1. Eliz. cap. 1. & 13. Eliz. cap. 2.) for aiding another, knowing him to be a principall maintainer of the authoritie of the See of Rome, *contra formam Statutorum predictorum*. But, because the enditement wanted certaine materiall words (expressely mentioned in the Acts) viz, upon purpose, and to the intent to set forth and extol the authoritie, &c. the Enditement was thought insufficient by the greater part of the Iustices (assembled for that purpose) notwithstanding the words, *contra formam Statutorum predictorum*, were therein contained, *Collectio Dyn. 3. 63.*

Againe it is not safe to recite the dayes or places, of the beginnings, continuances, prorogations, or dissolutions of the Parliaments: least, (by mistaking any of them) the whole enditement, fall to the ground thereby. *ibid.*

Thus farre of these points. But now let vs with a few words consider what enditements be receivable by the Iustices of Peace, and what ought to be rejected by them.

Generally they may receive Enditements before themselves, of all causes being either within their Commission, or within the Statutes whereof they haue to enquire. And they

Enditements
to be receiued
or rejected.

may also receiue Enditeiments taken before
 the Shirife in his Turne lawfully, that is to
 say, so that the Turne be holden within the mo-
 neth after Easter, or within the moneth after
 Michaelmas, and so that those enditeiments or
 presentments be indented & sealed betwene
 the Shirife and the Jurors, and so that they be
 made by the oath of twelve men at the least,
 and that those Jurors be of good fame and *De
 gales homines*, that may offpend peerely twen-
 tie shillings of Freehold, or twennie five shil-
 lings eight pence of Copyhold, *W. 2. ca. 14.
 R. E. 2. ca. 17. 3. R. 2. ca. 14. 3. R. 2. ca. 14. 3. R.
 3. ca. 14.* And for this purpose the said Shirife
 (*2. R. 2. ca. 14.*) bindeth the Shirife to certifie to
 the Iustices of Peace at their next Sessions the
 Enditeiments found in his Turne, or Law day.
 It seemeth also (by way of appointment) in the
 Booke (*27. H. 8. ca. 21.*) that the like might be
 done of the presentments of *Prisoners* in the
 Leetes, by virtue of the said Statute of *1. R. 2.
 ca. 2.* But that is further to be enquired of, for
 I find no better warrant for it, *2. R. 2. ca. 14.*
 This is certain, that Iustices of the Peace
 ought to rectifie Enditeiments found in any
 Leetes or Law dayes, upon the Oath made
 for the breeding of horses: to wit, that also,
 the Courte-holders of such Leetes are bound
 to certifie the same unto them within the space
 of fortye dayes, *22. H. 8. ca. 13.* for the
 year 1531. But

med: But also because the Iustices (being Judges of the Court) ought of Office to see, that the Bills of Enditement haue sufficient matter and forme in them. 24. E. 3. 74. And for that end, it is the maner (in some places) to commaund, that the Enquest take no Bills, but such only as the Iustices themselves haue first perused. Howbeit, as it is certaine that the Enquest may safely do the contrary, so long as the Bills doe carry good matter and allowable forme; So I will aduise, that the Iustices shal rather peruse the Bills after that they be found, then to put their pen into them before the Enquest shall offer and present them: taking it to be, not only no hinderance at all to the seruice, but also the most warie and secure way for the Iustices themselves to walke. For, though it be said (35. H. 6. 14. & 12. E. 4. 18.) if a Bill of Enditement be deliuered to a Iustice of the Peace, at (or before) the Sessions, which he promisseth to read, and to deliuer to the Iurie, and so doth accordingly, that he shall not be charged for it in a Tilt of Conspiracie: yet may it be thereupon doubted, whether he shall be excused, if (upon conference had) he do either wray, engrosse, or amend the Bill before it be preferred to the Enquest that shall haue it. And seeing that the Iustices do commonly receive the Bills from the Enquest, with their expresse assent to amend any defect of certaintie

in the forme onely: and may also award a *Veni-
nire facias* against the Creditors to amend a
bill vpon their first oath, at any time before it
be remoued, (8. H. 5. 8: & Stanf. 97.) so that
the businelle is not a whit impeached by this
forbearance, there is no cause (as I thinke) for
the Iustices of the Peace to anticipate the mat-
ter before the right time: but rather, to leaue
the first drawing and ingrossing of the Bills, to
the Clarke of the Peace or other ministers of
the Court, & (after the finding of them) then to
consider, whether they be formall, or ought to
be reformed.

Of the Presentments and

Informations of Officers,
and other men.

CAP. VI.

Having shewed how these Iustices
take knowledge by the labour of
Jurors in Enquests: It followeth
to declare also how they may haue
vnderstanding by other men: And that is to
be done, either by the presentment of publique
officers, or by the Information of private
persons.

In some cases therefore, these Iustices may
heare one another: for euery Iustice of the
Peace may (vpon his proper knowledge)

make

Presentments
of Iustices of
Peace and
Constables.

make presentment at the Sessions, of any offence done against the Actes (2. & 3. Phil. & Mar. ca. 8 : & 5. Eliz. cap. 13.) concerning the amendment of the high wayes. And in this, and such like cases, his report hath the force of a Presentment of xii. men : So that he and his fellows may proceed upon it. 2 H. 6. 5.

Of like value is a Presentment made at the next Sessions by searchers appointed to examine the true making of Tyle. 17. E. 4. cap. 4. And of some such like strength also (as I thinke) is the Presentment of the Constables, concerning sundry points contained in the Statute of Winchester. 13. E. 1.

Information
by priuate
men.

This Court may also be taken to understand by the meanes of priuate men : and that either for the Queene only, or for the Queene and themselves, or (in some speciall causes) for themselves without the Queene.

That which is for the benefit of the Queen, for herself and the partie, is sometimes moued by the free offer of him that openeth the matter, and sometimes wrought by commaundement of the Court.

Free and Vol-
untarie in-
formation.

The free motion of the partie, is sometimes by word only, which is properly but a Suggestion : & sometimes by writing, named a bill, plaint, complaint, or Information : all which be not alwaies of one force in this businesse.

For, albeit that we read (1. E. 5. 6.) that the Court

Court of Chancerie wil sometimes both take knowledge, and also a ward Processe vpon an Information by word in the behalfe of the Prince, and that 39. H. 6. 41. also admitteth such a matter: Yet I thinke that before Iustices of the Peace, these Suggestions & Informations both (be they by word, or writing) are but of the force to stirre by the Iustices to recommend the cause to the Enquest, and not to a ward any Processe vpon them: vnlesse it be in certaine causes, where that validitie is specially giuen them by the Statutes, as you shall hereafter perceiue.

There was once a time (I confesse) when Iustices of the Peace might haue awarded Processe vpon an Information (for the King only) of offences against any penall lawes, euen as they may yet vpon Endirements against the Peace: but that lasted not long, and therefore that course is holden now in speciall Statutes onely.

Neuerthelesse, at euery Sessions (saith Iudge Prisot. 35. H. 6. 15.) the Iustices of the Peace do vse to make Proclamation that if any will informe for the Prince, he shall be heard: and thereupon any man may come in, and may both informe the Iustices of the Peace, & giue euidence to the Enquest, without daunger of Conspiracie, by the opinion of the Court in the last said booke.

And

And as that which ariseth vpon Presentment or Enditement, is properly called the sute of the Queene: (as I told you out of *W. Fitzh.*) So this other (whether it be by Bill, Plaint, Complain, or Information) is more aptly termed the sute of the partie: at whose sute the Iustices of the Peace may heare of the abuse of Innekeepers, and Victuallers, and of Extortions, and Regratories, and perhaps of higher offences also, either for himselfe, or for the Queene: but of the other Articles (not declared in the Commission) at the sute of the Queene onely, by the expresse forme of the words in the last *Assignamus* of the Commission of the Peace. But therein (among other) some amendment (if I be not deceiued) is to be desired: vntlesse it be the meaning that they shall hold plea of Appeales betwene partie & partie, wherof I wil speake somwhat in the 14. chapter of this booke. In other statutes at large, such rules are to be folowed, as they themselves do prescribe.

And in this Information, the statute of Additions (1. H. 5. c. 5.) seemeth (vpon the bare words) to haue no place: for Informations be not mentioned in it: and vpon that reason, the Court (13. H. 7. 21.) did hold it cleare, that if Rescous be returned by the Shirif against certaine persons, without their Additions, yet in that case they may well be Uclawed vpon it.

The

The other compulso^rie information, groweth by examination of witnesses called into the Court, and is set forth in the statute of Drovers and Badgers (5. Eliz. cap. 12.) where it appeareth, that (vpon the examination of two lawfull witnesses) the Iustices of Peace may make Processe, as if it were vpon an Inquisition of twelue men.

Forced Information.

The like may they do, vpon the statute of Armour, 4. & 5. Phil. & Mar. cap. 2. And the very like also may they do vpon the Statute made against Forestallers. 5. Edw. 6. cap. 14. which last sayd statute seemeth (for this point) to haue bene followed, as a Patern, by the other two: so rightely they tread in the steps of the same.

Hereunto also you may adde, the examination of the Master and Mariners of Ships, wherein coine or victuall shal be transported against the meaning of the statute, 1. & 2. Phil. & Ma. cap. 5.

Thus much, of the knowledge of causes exhibited by such as either do it at large for the Queene, onely to haue the offence punished, or be specially allured thereto by regard of benefit growing in common to them with the Queene thereby. Now of those that seeke to informe the Court, for profite ensuing to themselves alone.

Suite between parties.

The knowledge that commeth this way,
is

is by the private sute and proper action of the partie, and is therefore in the Statute (11. H. 6. ca. 6.) termed a sute betwene partie and partie: whereof that Statute had no lesse consideration, then of those other sutes that be for the Queene her selfe: and therefore provided, that they also should not be discontinued by new Commissions of the Peace to be made.

I know, that there be not many Statutes which do give power to the Iustices of Peace, to hold Plea of Action betweene partie & partie: and I thinke it hath not bene often experimented vpon those very Statutes which do give it: and how the Judges do expound this present Statute (11. H. 6.) I cannot tell. Neuer the lesse, because I may neither wittingly conceale any such part of their authoritie and Iurisdiction, (although it were so but in mine owne opinion) nor safely report it without some prooffe and warrant, I will give you a few examples of this kind (as I take it) and will leaue the rest to further search.

The Iustices of Peace haue power to enquire, heare, & determine of all the defaults against the Statute (made 3. H. 6. c. 11.) concerning the leaping of the wages of the knights of the Parliament) as well by enquirie at the kings sute, as by actiō at the sute of the partie.

So may they heare & determine, by Information, Action of debt, or bill, the offences against

gainst the statute of Labourers, 5. Eliz..ca. 4:
And likewise, by Information, or any other
Action, the offences of taking Fish, Deere or
Hawkes, forbidden in the same Parliament.
cap. 21.

In which, and such like (as in Appeales,
by colour of some large words in the Com-
mission) the Iustices of Peace ought to pro-
ceed after the vsuall maner of other Courts
of Record at the common Law (if I doe not
mistake it) and therefore I will go no further
with it, but will prosecute that hearing and de-
termining that more properly and commonly
pertaineth vnto them, if first I may shew you,
how they are sometimes preuented in that
behalse.

Of the Impediments of procee-
ding vpon *Enditements*, before the Iu-
stices of Peace: and therewithall of the
Certiorari to remooue Records.

CAP. VII.

IT falleth out not seldoine, that
when Iustices of the Peace haue
taken an *Enditement* found be-
fore them, they cannot proceed to
hearing and determining vpon it: either be-
cause it is groundd vpon some such Sta-
tute as giueth vnto them no further power,
L. i. but

but onely to enquire thereof: or els because the *Enditement* is taken out of their hands by *Certiorari*, and conueied to Iustices of a higher authoritie, at the sollicitation & by the meanes of some parties grieued, to the ende that either they may trauerse them aboue, or there auoid the for insufficiencie of forme or matter.

Where Iustices of Peace may enquire onely.

And therefore Iustices of the Peace may onely enquire of certaine the offences against the Acts (1. El. c. 2. & c. 3 : 5. El. c. 1 : 13. El. c. 2.) touching the acknowledging of the Queenes supremacie, or the seruice of God, or comming to the Church, or the stablishment of true religion: as you may see, 23. El. ca. 1.

And they may only enquire, of any the treasons, or misprisions of treasons, made by the same Act, 23. El. ca. 1.

Neither can they go any further, then only to enquire of, & to endite the offenders against any the Articles of the Acte made (23. Eliz. cap. 2.) concerning sedicious rumors against the Queene.

In the rest (so farre as I haue found) their power of Enquirie is accompanied with the authoritie to heare and determine also. For this want of Iurisdiction is not found in the Commission of the Peace it selfe, but only in certalne statutes, that (for waightie causes) do restraine this further proceeding.

By what meanes such *Enditements* shall be

be remooued to those higher Courts, I will shew you when I come to speake of Certifying the Records of the Sessions: and wil now go on with those other Enditements that be remooued by labour of the parties.

Albeit, that in the remoouing of pleas betweene partie & partie, from inferior to higher Courts, by *Tolt, Pone, Recordare, &c.* there was woont to be a probable cause alleaged, for which the same were remooued: yet in this case of the Crown there needeth no cause to be comprised in the Writ of *Certiorari*: because they all be the Courtes of the Queene, and it breedeth neither iniurie to the offendor, nor losse to any other person, in what court so euer the offence be tried.

Enditements
remooued by
labour of the
parties.

This *Certiorari* then, may commaund either the Record it selfe, or *Tenorem Recordi*, to be sent vp, and it ought to be obeyed accordingly. For, vpon faile thereof, first an *Alids*, then a *Pluries* (*vel Causam nobis significes*) and lastly an Attachment shall go out against them that should send it, as M. Fitzh. noteth in his Nat. Br. Fol. 245. but I haue heard, that they vse also a *Sub pœna*, at this day.

And albeit the *Certiorari* be a *Superfedeas* of it selfe, yet may the partie vpon the *Certiorari* purchased, haue a *Superfedeas* also, directed to the Shirife, and commaunding him that he arrest him not vpon that Record before the

Iustices of Peace, Fitz. *ibid.* fo. 237. In which place also he doubteth, whether the Iustices of Peace themselves ought of dutie to award their owne *Superfedeas* to the same effect, after that the writ of *Certiorari* is brought to their hands.

This Writ of *Certiorari* is ever directed to the Iustices of Peace, and yet (as you haue heard) the *Custos Rotulorum* only hath the keeping of these Records; but the ancient Commissions of the Peace had no *Custos Rotulorum* specially named in them (as I haue told you) & then this certifying belonged to them all, which forme the writ reteineth to this day. And if it fall in question, whether such a *Certiorari* were deliuered to the Iustices of Peace or no, that must be tried (saith the booke, 10. H. 7. 24.) by the verdict of twelue men.

Now, if a *Certiorari* come to the Iustices of Peace to remooue an enditement, & the partie sueth not to haue it remooued, but suffereth it to lie still, then the Iustices of Peace may proceed notwithstanding the Writ, as Hubbert the Kings Atturney sayd, 6. H. 7. 16.

If or otherwise, the triall of a Felon (if the enditement were of Felonie) might be delaid and deluded also. But yet Keble held opinion against him, and was fearefull that in such a case it might proue felonie to make execution of the felon after such a Writ received.

And

And if a *Certiorari* come to the Iustices of Peace to remoue an Enditement, and in truth the Enditement was not taken till after the date of that *Certiorari*: yet, if the Enditement be remooued thereby, it is good inough, for that they both be the Queenes Courts, 1. R.

3. 4.

In the making of a Certificat vpo this *Certiorari*, the Iustices of the Peace ought neither to omit that which doth authorize them, nor to exceed that which belongeth vnto them. The maner of the certificate

If or, on the one side, if they Certifie an Enditement of Felonie, or of a Riot as taken *coram Iusticiarijs ad pacem*, it is not enough, without saying further, *Nec non ad diuersas felonias, &c.* and otherwise, it is doubtful whether the Endited shall be quite dismissed or not because the Iustices of Peace haue then no Record at all remaining with thē (for the Clarke of the Peace maketh his Entrie accordingly,) and that Record which they sent by, is insufficient. And therfore, the Clarke of the Crowne was forbidden to receiue any such Certificat. 12. H. 7. 25.

On the other side, if they certifie an Enditement of felonie not determined, into the Kings Bench, they ought not (without Warrant) to certifie an other Record of the acquittall of that Enditee for the same matter for nothing ought by them to be sent thither without

L l. iii.

warrant,

warrant, but that which is executorie, and needeth the helpe of that higher Court. 8.E.4.18.

And if a *Certiorari* be, to send by the enditement of A. in which Enditement some others be endited together with the same A. yet need not the Iustices of Peace to make Certificate concerning any but A : 6.E.4.5.

For although they be named jointly, yet be they endited severally (as I haue said before) and the Queene may pardon A. without forgiving the other, 6.E.4.5. Markam.

Againe, if the Enditement be of the stealing of two horses, and the *Certiorari* speaketh but of one horse : it seemeth that they need not to certifie it at all, because of the variance : for it is certaine, that they of the Kings bench wil not arraigne the Enditee vpon it : but wil rather write againe to know, whether there be any Enditement that agreeth with the Writ : 3.lib.Ass.pl.3.civ.

Finally, it is noted (8.H.5.5.) that Hankford the chiefe Iustice of the Kings Bench, obserued this order, that he which brought thither an Enditement (taken before Iustices of the Peace) should endorze his name vpon the backside of it : which I note, not to teach them of the Kings Bench, but to let the Iustices of Peace see, that there is some heed to be taken of him by whom they send by their Enditements.

Of the sundry sortes of Processe

vpon Enditements and Informations :

& of the *Superfedeas* for stay of them.

CAP. VIII.

The Court being thus made priuie and possessed of causes; must of due tie proceed to the handling (or hearing) and triall of them: the which because it cannot indifferently do, vnlesse it keepe one eare for the offendour, that he also may be heard in his owne discharge, as others were heard to lay the charge vpon him: the maner is (if he be absent) to award Processe against him, to come in, and to make answer.

But if he appeare in Court, and confesse the Enditement, then needeth there no Processe at all: for he shall be committed forthwith to prison, vntill that he hath made his Fine. 1.H.7.7.

Commonly an Enditement or Information, (being but an accusation or declaration against a man) is of none other force, but onely to put him to answer vnto it.

And hereof all Processe hath the name, because it proceedeth (or goeth out) vpon former matter, either Originall or Iudiciall. Processe, whereof it is named.

Nowbeit I make difference, whether this Processe be grounded vpon an Enditement, or vpon some other information: for they be

not all one: vnesse it be (in a few statutes) so specially provided: Although the statute (33. H. 8. cap. 10.) did once conioyne and couple them.

Authoritie to
make out pro-
cesse.

The authoritie of making processe vpon Enditements, is giuen by expresse words in the end of the second *Assignamus* of the commission: and in other cases (where it is not namely giuen) it is implied of congruence (or rather of necessitie) in the words heare and determine: which cannot be performed, vnlesse the partie either do come in *gratis*, or be brought in by the power of processe.

This Processe ought alwayes to be in the name of the Queene, thus: *Elizabeth Dei gratia, &c. Vicecomiti Kancie, &c.*: And therefore also, (seeing she is partie) it must say, *non omittas propter aliquam libertatem, quin &c.* Fitzh. prerog. 21.

Teste of the
Processe.

And the Teste thereof may be vnder the names of any two Iustices, so that it be made sitting in the court in the Sessions: *Commissio del Peace: & Brooke Tit. Peace. 6. & 7.*

New commis-
sions of Peace
do not dis-
continue the
old processe.

But now, wheras the Commission giueth to the present Iustices, authoritie to make processe vpon Enditements, taken as well before former Iustices, as before themselves: all that doing was woont to be discontinued in Law by the comining out of a new Commission of the Peace, vntill that the statute (11. H. 6. c. 6)

did

did establish, that no pleas, sutes, or processe (to be taken before Iustices of the Peace) should be discontinued by a new Commission of the Peace to be made; but that they should stand in their strength, and that the Iustices (assigned in the same new Commission) should haue power to continue the same, and to heare and determine all that which dependeth vpon them. And of the like effect, there is a branch in the latter ende of the Statute, 1. Edw. 6. cap. 7.

Furthermore, whereas Shirifes (and their Bailifes) vsed to arrest men, and to proceed vpon Enditements found in their Turnes or Lawdayes: another Statute (made 1. E. 4. c. 2.) wryngeth that power out of their handes, and deliuereth it ouer to the Iustices of the Peace also: appointing them to proceed vpon them, as if they had bene found before themselves.

Now, seeing that this Processe of the Sessions is sent out to this ende, that either the partie shall come in, to answer and to be iusticed by the Law: or els that he shall (for his contumacie) be deprived of the benefite of Law (for so much in effect doe the wordes of the Commission, *Quousque capiantur, reddant se, aut velagentur*, import in them) it followeth, that in all cases of Enditementes, (if the partie bee returned insufficient) the Processe of Vclawric.

Vclawrie, lieth against the offender, if he be not taken before, or do not otherwise offer and yeeld himselfe. And then the power of these Iustices endeth with the vclawrie: for they can make no *Capias vclagatum*, but must certifie the Vclawrie into the bench of the Queene.

A good while after that Commissions of the Peace were first awarded, there was not giuen by them any power to make out any Processe of Vclawrie: for I haue seene (amongst the Records a Commission of the Peace (20. Edw. 3. Part. 1. Patent. in dorso) wherein were words authorising the Commissioners to arrest all such as should be endited before them: but by and by this followeth, *Et ad nomina eorum qui fugerint, & coram vobis iusticiari noluerint, certificandum in Cancellaria, &c.* So that, if they might not get them arrested, they could go no further, but to certifie their names only.

The generall
Processe vpon
Enditements
of Trespasse.

Now the meane to this Vclawrie is not one in all cases: for, vpon Enditements of Trespases against the Peace, or such other contempts, the Processe is one: and vpon enditements of Treason (or Felonie) it is another.

Vpon Enditements of Trespasse agaynst the Peace, of Conspiracies, and of Routes in presence of the Iustices, or in affray of the people, if the offendours may not be found, nor
brought

brought in by Attachment or Distresse, (by reason of their insufficiencie) the Processe of Vlawrie is to be awarded by the statutes, 18. E. 3. Stat. 1 : 18. E. 3. Stat. 2. ca. 5. The like is against such as be endited vpon the statute of Liueries. 8. H. 6. c. 4.

And a *Venire facias* first, and then (if thereupon he be returned sufficient) a *Distringas*, and so the same Processe infinite till he come in; but if a *Nihil habet*, &c. be at the first returned against him, then a *Capias*, *alias*, and *pluries*, and after an *Exigent* (as it seemeth by *W. Marrow*, and the old precedents, agreeing with the Common Course, as I take it) is the very ordinarie Processe vpon all enditements (not sounding in Felonie or greater offence) whether they bee of Trespasse against the Peace, or of contempt against penall lawes: vnesse it be otherwise specially provided by those same statutes, whereupon such Enditements be altogether grounded, And of this sort these be some.

The statute (22. H. 8. cap. 5.) concerning Bridges in highwayes, alloweth such Processe as the Iustices of the Kings Bench doe vse, or such as the Iustices of the Peace themselves shall thinke meete by their Discretion, for the speedie amendment of those Bridges.

Upon Enditements of Liueries, maintenance, Archerie, vnlawfull games, &c. by the
statute

Speciall Processe.

Statute (33.H.8.c.16.) there was giuen one *Venire facias*, one *Capias*, and the the *Exigent*: But it is to be weighed, whether the Statute (37.H.8.ca.7?) which utterly repealeth that Statute (3.Hen.8.) do transference the maner of that Processe vnto the ancient Quarter Sessions (as it doth sundry other parts of the sayd Statute) or no.

The Statute of Labourers (23. Hen. 6. cap. 13.) gaue (after Enditements grounded thereupon) an Attachment, *Capias* and *Exigent*: But I thinke it no great doubt, but that point is taken away for Labourers, by the new Statute (5. Eliz. cap. 4.) and standeth good for none, except it be for *Virtualers* onely.

Processe vpon
Recognition.

The Statute 5.E.6.25. giueth power to the Iust. of Peace, to enquire of Alehousekeepers, whether they haue done any act to the breach of their Recognisance. And if any such matter be presented, then to award Processe against the offender, to shew why he should not forfeit his Recognisance: but what this Processe shall be, I will not determine: For, I do not find, that in any other case (though it appeare that a man hath forfeited his Recognisance) the Iustices of the Peace can award any *Scire facias*, or other Processe to call him in vpon it: but rather to certifie the same into higher Courtes, that from thence Pro-
cesse

cesse may issue out, to call the partie to his answer.

Some other Statutes there be also, that Processe into haue extended the authoritie of the Iustices of other shires, Peace (in sending processe) beyond the bounds of their owne Commission. For, by the Statute (1. Edw. 6. cap. 1.) three Iustices of the Peace (the one being of the *Quorum*) may make Processe against such as be thereupon endited for depyauing the Sacrament by two Writs of *Capias*, and the *Exigent*, and by *Capias uilagatum*, into any place within the Queenes dominions.

So, if a seruant depart into another Shire, the Iustices of the Peace of that Shire, (where the departure was) may graunt Writs of *Capias*, to the Shirife of that other Shire (where the seruant is) returnable before themselves, 5. Eliz. ca. 4.

The like may they do (by the statute 22. H. 8. c. 5.) where a decayed bridge lieth in one Shire, and the person or lands (chargeable thereto) do lie in an other Shire.

They may also award Processe of Attachment into any forraigne Shire against the accountants for money leuied towards the making of any gaole: 23. H. 8. c. 5 : & 5. El. c. 24.

But if the Enditement be in one Countie, and the Enditee be named to be (then, or *Nuper*) dwelling in an other Countie, there is

a speciall course of Processe in that behalfe for his benefit, appointed by the statute (8. H. 6. cap. 10.) both for Treason, Felonie and Trespasse.

If or (before any *Exigent* shall be awarded) one *Capias* must be sent out, and returned: and then a second *Capias* shall go (into the Countie where he is supposed in the Enditement to be, or to haue bene, conuersant) returnable before the same Iustices of the Peace, before whom the Enditement was taken three moneths at the least after the date thereof (for all Counties be now holden from moneth to moneth by 2. Ed. 6. cap. 25.) by which last Writ, the Shirife shall be commanded to take the Enditee, if he may be found within his Baili-wike: and if not, then to make Proclamation in two Counties (before the returne of that Writ) that the Enditee shall appeare before the sayd Iustices of the sayd Countie (where the Enditement was taken) at the day contained in the last sayd *Capias*, to answer to his offence: at which day if he come not, then the *Exigent* shall be awarded against him, and otherwise not.

And by the equitie of this statute of 8. H. 6. cap. 10. (saith M. Marrow) if the Enditee be imprisoned in an other Countie, the Iustices of Peace may award an *Habeas corpus* to remooue him before them.

But

But if it be mentioned in the Enditement, that the Enditee is dwelling in another countie, by the *Alias dictus* onely: then is it out of the case of that statute, 8.H.6: because the *Alias dictus* is not to be trauesed. 1.E.4.1.

But yet you must presuppose that all this Processe of *Utlawrie* may be staied by a *Superfedeas*. And Fitzh. in his Nat.Br. (fol. 137) hath the case, that if an *Exigent* go out vpon an Enditement of Trespasse (found before Iustices of the Peace) the partie may find suerties in the Chancerie, (body for body) to appeare at the day of the Writ, and may then also haue a *Superfedeas* from thence to the Shirefe, commaunding him to forbear to take him, and to let him goe if he haue them already taken him for that cause. And againe, you may see in the new booke of Entrees (Fol. 546.) the Processe vpon such an Enditement staied by a *Superfedeas* issuing from one Iustice of the Peace alone, and testifying, that the partie came before him, and found suerties *de fine assidendo*. But, as I beleue the former, so will I not perswade the practise of the latter: because I thinke it not in the lawfull power of any one Iustice of the Peace, to award any such warrant, but that it must be done by two Iustices at the least.

I haue yet to speake of Processe vpon Enditements of Treason and Felonies, wherein

Superfedeas to stay Processe.

Processe vpon Enditements of Treason & Felonies.&c.

I will be short, that I may passe ouer to other things.

The Processe vpon an enditement of treason, for counterfaiting mony, is by *Capias* only, and so set forth, 3. H. 5. c. 7: neither is there any other Treason whereupon Iustices of the Peace may award Processe.

It seemeth by M. Marr. that the Processe at the common law vpon Enditements of Felonie, was but one *Capias*, and then the *Exigent*. For so it was vpon an Enditement of death, lib. Ass. 22. pla. 81: & Stanf. 67. But the old Precedents (grounding themselves vpon the statute (25. E. 3. cap. 14) do vse the mention of two Writs of *Capias* before the *Exigent*. For that statute prouideth, that after returne of *Non est inuentus*, vpon the first *Capias*, another *Capias* shall be incontinently awarded, whereby the Shirife shall be commanded to seise the rattels of the Enditee, & safely to keepe them, till the day of the *Capias* returned: and if he then also returne *Non est inuentus*, and the Enditee commeth not in, the *Exigent* shall be awarded, and the cattails shall be forfeited: But if he come and yeeld him, or be taken, before the returne of the second *Capias*, the goods and cattels shall be saued vnto him.

Processe into
forraine shires

And here also the Iustices of Peace haue power to send into a Forraine Countie: for, whereas by the common Law no man could
be

be Attached vpon an Enditement, or Vclawrie of Felonie, but onely in the countie, wherein he was endited or outlawed, whereby many euill men were much incouraged: the statute (5.E.3.c.11.) did take order, that Iustices (assigned to heare and determine Felonies) might direct their writs to any countie in *England* to take such Enditees, whither soeuer they were remooued.

On the other side, if the Enditement be found in one countie, and the Enditee is therein named to be then dwelling in another countie: I haue told you already (in this Chapter) what Processe belongeth to it, and therefore I will in hand with Processe vpon Informations.

The power of making Processe vpon Informations, proceedeth from speciall statutes, and may not therefore varie from their direction, although they themselves do vary greatly one from another.

For vpon an information giuen for the Queene before Iustices of the Peace, vpon the statute of Liueries (made 8.E.4.cap.2.) they shall award such Processe as is made vpon an Originall Writ of Trespasse done against the Queenes Peace: because the Information it selfe is (by force of that statute) in stead of an Originall Writ.

And vpon Information made vnto them, Alhouse.

¶ m. i.

that

that an Alehouse keeper hath done any acte whereby he hath forfeited his Recognisance, they may atward processe against him, to shew why he should not forfeit his Recognisance, by the statute 5.E.6.ca.25: as hath bene said: But learne if that be meant of a *Scire facias*, or of some other Processe. For the rest, I leaue them to further search of such as shall haue cause to make them.

Of Heating, vpon Confession.

CAP. IX.

THe partie being thus brought in (or otherwise peelding himselfe) to answer: Iustice requireth, that he be heard to speake: and therefore he may (as his case will serue) either confesse, or denie, the offence wherewith hee is burdened.

And this Confession is of two sortes, Free, or Forced: and that former is of two kinds also, absolute, or after a maner.

Free Confession.

In the free and open (or absolute) Confession, he taketh the fault vpon him, and yeldeth himselfe simplie to such paine as the Court will inflict for it.

And this free Confession is of great force in the

the Law: for, if it be vpon an *Enditement* of Batterie, and (after such confession had for the Queene) the partie beaten wil also bring his Action of Trespasse for his owne damage: then shall the defendante be concluded by his former confession vpon the *Enditement*, so that he shall not be receiued to say the contrary. 9. H. 4. 8: & 11. H. 4. 65.

But the other (which I call Confession after a manner) is onely a not denying, in which the partie doth cunningly, and (after a sort) take the fault vpon him, without confessing himselfe guiltie thereof: as where he putteth himselfe in *Gratiam Reginae, & petit admitti per finem*, without any more, or (by Protestatiō that he is not guilty) pleadeth his pardon: and such a Confession (if I may so call it) doth not so conclude him, but that he may afterward plead Not guiltie in any Action brought against him, 9. Hen. 6. 60. *Cur.* & 11. H. 4. 65. And yet (M. 20. R. 2. as *W. Statham* reporteth) the case is generally set downe, that if he once make a fine, he shall be estopped by it. Neuerthelesse I thinke, that the distinction (which I haue laied) will reconcile the variance.

But here it is good to learne, whether the Iustices be compellable to admit such a confession by a manner, being altogether deuised in fauour of offenders, and for deceiuing of the
Mm. ij. Queene:

Queene: or whether they may driue the partie either to an absolute confession (for increase of the Fine) or to his Trauerse, that (failing therein) he may be imprisoned, and fined also.

Forced Confession.

The forced Confession whereof I spake, is that, which the Iustices do wring out of the partie by the Examination of himself, in such cases wherein that examination is permitted. But because I intend to speake of Examination by it selfe, I will reserue this till I come to that.

Of hearing, by Discretion.

CAP. X.

Wether the offender shall freely confesse the fault, or finely yeeld himselfe to Grace, or plead his pardon without confessing it, yet then is that matter fully heard, and the Court made ready to determine of it: But if he shall denie the fact, then must some other course of Hearing (or triall) be taken for it.

Deniall of the offence, tried.

And that is in some cases, by Discretion of the Iustices: in some other cases by Examination of the parties or witnesse: and in some other cases by Certificat of other men: but in most cases by Trauerse or Arraignment, both which last trials are performed by the verdict of twelue.

For Iustices of the Peace cannot (vpon an Inditement of Maiheme) make the Triall by their owne view or inspection, as the Iustices of the Kings Bench may, saith Marr.

The statute (11. H. 7. cap. 3.) pretending, that offences (committed against the statutes of Riots, Retainers, Maintenances, Embrace-ries, Extortions, Vnlawfull games, and such like misdemeanors) were neither accordingly punished before Iustices of the Peace, (by reason of the great corruption and fauour of the Enquestes, sworne and charged thereupon to enquire before them) nor could be otherwise conveniently corrected by order of Law, vntil they were found and presented by twelue men thereto duly sworne: did enact, that from thenceforth Iustices of the Peace, vpon information made (for the king) before them, should haue full power by their Discretion to heare and determine all offences and contemptes against many penall lawes, then in force; and not repealed.

But as one sayd, *Ex bonis legibus, mala exempla*: So, the Parliament (1. H. 8. c. 1) complained, that many men were deceitfully entrapped, and wrongfully condemned thereby, and therefore it resumed that power: yea, and the king withal chopped off the heads of some of them that had filled his fathers purse by the execution of that & some other penal statutes.

So that now againe the Triall of offences, ought (for the most part) to proceed, either after the generall order of the common Law, or vpon such speciall examinatio (or other prooffe) as some statutes do giue in speciall cases: and this hearing (at libertie, and discretion) hath seloome any place.

But wheresoeuer it is permitted, that counsell which M. Bracton (*Lib. 1.*) giueth, is to be harkened vnto: In Iudiciall hearing of a fault (saith he) besides the body of the fact it selfe, these seuen circumstances are to be weighed, namely, the cause, the person, the time, the place, the quantitie, the qualitie, & the euent.

And for prooffe, that hearing by discretion, is yet in some sort suffered, take this for example.

The Iustices of Peace may heare by their discretion, as well by Examination, as otherwise, at the suite of the King, or of the partie, the offences done agaynst the Statute prouided for the true making of Tiles, 17. Edw. 4. cap. 4.

But how farre this discretion, and the word Otherwise may be extended in this, and such like cases, it cannot well be foretold, for it is referred to them, and they must take counsell *ex re, & extempore*, for it.

Of

Of Hearing (or Triall) vpon *Examination.*

CAP. XI.

THe obstinacie of euill dooers, that would shew no conscience in acknowledging of their faultes, and the corruption of Iurors, that would present nothing that lay onely in their owne knowledges, hath begotten and brought into our Law, this triall by Examination where with it was not before acquainted.

And yet, this maner of Trial is not loosely permitted to Iustices of the Peace, but in cases onely, where, either the Statutes do generally referre the triall to their Discretions, or else do specially authorize them to take the Examinations.

The Examination then, is sometimes of Examination the offenders themselues, sometimes of Wit- of the parties-
nesses that can speake to the matter, and sometimes both of the parties and witnesses: of euery of which I will giue you an authoritie, or twaine, and leaue the rest to your owne reading and examination.

Upon apparance (after Processe) against Liueries, the offenders of these Statutes of Liueries, the Iustices of Peace may examine them, and thereupon conuince them so, as if they

¶ m. liii.

were

were thereof comiict by Enquest, 8.H.6.ca.4:
& 8.E.4.ca.2.

Deere haies,
&c.

They may also call before them, and examine, all such as shall be suspected to keepe Deere haies, or Buckstals, or that vse to stalke or to take pong Herons against this Statute, and may (finding them faultie) commit them to prison, till they find Suerties to pay the forfeiture, 19.H.7.ca.11.

Examination
of others.

And because it is often seene, that those which haue committed an offence, will also increase their fault by denying of the same, therefore some Statutes (as I sayd) do appoint, that the Iustices of Peace shall take the examination of others, besides the offendours themselves.

False tokens.

And thereupon, the vsers of false priuie tokens, or of counterfeit Letters, may be tried out by the examination of Witnesses, 33.H.8.cap.1.

Hawkes egges

And the vnlawfull Takers of Hawkes egges, or Swannes egges, may be detected and conuicted by informatiō, and such proofs, 11.H.7.ca.17.

Now, whereas also some Statutes do enable the Iustices of Peace to heare & determine, by the generall vse of the word Examination, without shewing of what persons: it seemeth to me, that they may thereupon examine, as well the parties, as other witnesses.

Such

Such an one is the statute provided for the Tiles.
 true making of Tiles. 17.E.4.cap.4: Such
 another is the Statute, made for the examina-
 tion of offences done by Coroners. 1.H.8.ca. Coroners.
 7: And such another also, is the Statute or-
 dained for the examination of putting into Fo-
 rests or Wastes any stoned Horses being un- Stoned Hor-
 der the height of fifteene handfuls, 32.H.8. ses.
 cap.13.

Thus farre of Examinations: which, whe-
 ther they ought to be taken vpon oath, or no,
 you may coniecture by that which I haue al-
 ready sayd thereof in the second Booke: and
 yet (for more aide towards your resolution)
 I say now, that these Examinations ought
 (in my slender iudgement) to be vpon oath,
 the rather because the triall here dependeth
 vpon them, whereas those others are but to
 enforme the Iurie towards an Enditement
 onely, in so much as notwithstanding the ex-
 amination so taken, yet the parties are
 bound to giue the matter of them
 in euidence againe, *Vina*
voce, when the triall
 shall be made.

Of Triall (or Hearing) by
Certificate.

CAP. XII.

BEfore some other Iudges, the Law hath allowed Triall by sundry sorts of Certificat: as from the Queenes Lieutenant, in the case of Escuage: from the Bishop, in the cases of Bastardie, Bigamie, Excommunication, &c. and in some other cases from other men: But, before Iustices of the Peace, I haue not hitherto found any triall by Certificate, appointed by Statute, but in this onely case following.

Armour.

If any man (being impeached vpon this Statute of Armour, for not hauing his appointed furniture) shall alledge, that the same furniture so lacking, could not be conveniently provided, for want of the same within the Realme: this shall be taken for a good answer (in case it be true) but if it be denied or trauesed, issue shall be ioined vpon it, and the Triall shall be onely by Certificat to be made by the L. Chancellor, L. Treasurer, L. President of the Counsel, L. Steward of the Queens house, L. Priuie Seale, L. Admirall, and L. Chamberlaine of the said household, or by three of them, in writing vnder their Seales. 4. & 5. Phil. & Mar. cap. 2.

As

As for the Certificat of the offence, and of Alehouse the Recognisance taken by two Iustices of the Peace (one being of the *Quorum*) of him that hath obstinatelie kept a common Alehouse against the statute, 5.E.6.cap.25. that is made a sufficient conuiction of the same offence, without further Triall thereof to be had at the Sessions of the Peace: the which, and the rest of that sort, I do therefore ouerpasse here.

Of Hearing (or *Triall*) by Trauerse.

CAP. XIII.



The most solemn and auncient Triall of the fact, agaynst an offendour that will not confesse it, is that which we see performed by the verdicte of twelue good and lawfull men of the Countrie: and it also doth best content and quiet the guiltie man, for that it passeth by his owne Countrymen, Neighbours and Peeres, according to the auncient libertie of the land, whereunto euery free boyneman thinketh himselfe inheritable.

And thereupon it is named (Mag. Cart. ca. 29.) *Legale iudicium parium suorum*, the lawfull

full iudgement of a mans owne Peeres, or Equals : because, as the Nobilitie, so also the Communalitie, are to be tried, in treason, felony, or mispyssion of treason, not the one by the other, but each by men of their owne estate and calling: I meane by the word Nobilitie, as our owne Law speaketh (which calleth none Noble vnder the degree of a Baron) and not as men of foraine countries do vse to speake, with whom euery man of Gentile birth is accounted Noble: for we daily see, that both Gentlemen and Knights do serue in the Parliament, as members of the Communalitie.

Howbeit, in cases of forcible Entrie, Rior, Rout, vnlawfull Assemblie, or such like, they of the Nobilitie shall be tried by twelue men, as well as other inferiour subiects. 3. & 4. Ph. & Mar. reported by Dalison.

This Triall happeneth before Iustices of the Peace, sometimes vpon Trauerse, and sometimes vpon Arraignment.

But yet, some things be common to them both: For, if the partie charged, wil Demurre in Law vpon the euidence, the Iustices ought to record his Demurrer: So, if he will plead (in Iustification) any matter of Record that is before other Iustices, they ought to giue him day to bring it in, Marr. So also, if the Iustices (thinking an Enditement to be void) haue discharged the prisoner, paying his fees: yet, vpon change

change of their opinion, they may ſtay him againe, at any time before Iudgement, Fitzh. Endit. 27.

But if he plead a Pardon before them, in which certaine perſons be excepted, and the Queenes Atturney is not preſent to ioyne iſſue, that he which pleadeth it is one of thoſe that be excepted, then they themſelues may ſupply the office of the Atturney, in that behalfe. 8.E.4.7.

Whereupon alſo I gather this generall The Queens learning, That they ought not to ſuffer the aduantage. Queene to be diſaduantaged, where it lyeth lawfully in their power to preuent it.

And if an Inditement be chalenged, for ſuch cauſe as theſe Iuſtices will not allow, then may they ſeale a Bill of that exception for the partie, if he will write and require it according to the Statute, W.2.cap.30. as M. Marrow writeth.

The Trauerſe tooke name of the French, Trauerſe. de Trauerſe, which is none other then *de tranſuerſo*, in Latine, ſignifying, on the other ſide: becauſe, as the Enditement on the one ſide chargeth the partie, ſo he on the other ſide commeth in to diſcharge himſelfe. For, whereas the Arraignement proceedeth vpon him that is vnwillingly brought in by proceſſe, the trauerſe is (for the moſt part) freely tendered by the partie ſelfe.

To

To Trauerse an Enditement then, is to take issue upon the chiefe matter therof, which is none other to say, then to make contradiction, or to deny the point of the Enditement. As, in a presentment agaynst A. for a high way ouerslowen with water for default of scowring a ditch, which he, and they (whose estate he hath in certaine land there) haue vsed to scowre or cleanse: A. may Trauerse, either the matter (videlicet, that there is no high way there) or that the ditch is sufficiently scowred: or otherwise, he may Trauerse the cause, viz. that he hath not that land, &c. or that he and they (whose estate, &c.) haue not vsed to scowre the ditch. 5. H. 7. 3.

And this libertie of Trauerse is commonly restrained to Enditements of Trespasses, Contempts, Riots, and other inferiour offences, within the Commission or Statutes, authorizing the Iustices of Peace: and is not usually extended to Treasons or Felonies, as you shall hereafter see.

Trauerse before Iustices of the Peace.

M. Brooke noteth, that it is not much vsed to Trauerse Enditements before Iustices of the Peace, but rather to remooue them into the Kings Bench, and to trauerse them there: Howbeit, common experience at this day can shew many Trauerfes before Iustices of the Peace also.

And there is no doubt, but that as Iustices of

of the Peace haue power to award Processe,
and the parties also haue libertie to speake for
themselues: So (hauing spoken) the Iustices
may Heare & Determine of their speach, whe-
ther it touch them in freehold, or otherwise.

If or although it be holden (2.R.3.11:19.
H.8.11:& Fitz.tit.Ass.442:& in other books)
that a man shall not be receiued to trauerse a
Presentment, vnllesse it do charge him in his
freehold: yet Husley and Fairefaxe said (5.H.
7.4.) that a presentment (not concerning free-
hold) which is found before Iustices of the
Peace, may be trauersed: and whether they
meant it of a Trauerse in the Kings Bench, or
before Iustices of the Peace, it maketh no dif-
ference, because the reason is all one, that is,
If Processe be awarded, the partie may come
in, and offer his Trauerse, and otherwise the
processe should be in vaine.

Hereunto agreeth Moubray (41.E.3.26.)
saying further, that in a Leete such a Present-
ment is not Trauersable, because out of a Leet
no Processe can be awarded vpon it. And this
peradventure is the reason of the booke (8.
Ed.4.cap.5. and of D. Marrow) where they
say, that a Presentment of bloudshed found
in the Shirifes Turne, and sent (as it ought
to bee) to the Iustices of Peace, cannot bee
trauersed before them, as whereupon they
can neither make Processe, nor discharge
the

the partie by way of Plea.

So that this seemeth a generall learning, that wheresoeuer any Processe *ad respondendum*, goeth out vpon such an Enditement as is trauersable, there also the partie may offer, and ought to haue, his Trauerse against it.

But Marrow saith, that if a man be of an Enquest that endited him of Trespasse, or such like (so that vpon the matter, he endited himselfe) this is so strong, that he shall neuer be receiued to Trauerse.

It is not my meaning to pester this Booke with Precedents: But yet, forasmuch as in the Record of one Trauerse, there is at once discovered, the Scile of the Sessions, the Enditement, the Processe to answer, the Trauerse it selfe, the Verdict, and Iudgement thereupon, the processe of execution, the yeelding of the parties, and the assesment of their fines: so that it alone may serue in stead of all, I trust it shall not be troublesome to insert it.

Somerf.

Scile of the
Sessions.

Alias, scilicet ad Sessionem pacis, tentam apud Bridgewater, in comitatu prædict. die Martis proxime ante festum Sancti Matthæi Apostoli, anno regni Dom. nostræ Elizabethæ Dei gratia, Angliæ, Franciæ, & Hybernia Reginæ, fidei defensoris, &c. vicesimo, Coram Iohanne Stowell milite, Humfrido Walron vno magistrorum Curie Cancellaria dictæ dom. Regina,

Regina, & alijs socijs suis Iusticiarijs dicta domine Regina ad pacem in comitatu predicto conseruandam, Necnon ad diuersas felonias, transgressiones & alia malefacta in eodem comitatu perpetrata audienda & terminanda assignatis per sacramentum 12. Iuratorum extitit presentatum, quod Iohannes Long, de &c. Enditement.
 R. M. de &c. & T. L. de &c. cum diuersis alijs ignotis malefactoribus, & pacis dict. domine Regina perturbatoribus, modo guerrino arraia-
 ti, uniti, & assemblati, vicesimo die Iulij in nocte eiusdem diei, anno &c. Vi & armis (viz.) B-
 aculis, gladijs, clipeis, pugionibus, falcastris, & alijs armis, tam inuasivis, quam defensivis, apud
 C. &c. clausum cuiusdam Wil. Willet (voca-
 tum B.) illicitè, riuosè, & rontosè, fregērunt, &
 intrauerunt, & octo planstra fœni ad valenciã. &c.
 ad tunc & ibidem existentia, de bonis & catal-
 tis dicti Willihelmi Willet ad tunc & ibi-
 dem iniuste & illicitè ceperunt & asportane-
 runt, contra pacem dicta Domine Regina, &c.
 Et contra formam Statuti inde editi & prouisi. Per Proccesse to
answer.
 quod preceptum fuit vicecomiti quod non omit-
 teret, &c. quin venire faceret eos ad responden-
 dum, &c. postea q. scilicet predicto die Martis
 proximè ante festum Sancti Matthæi Apostoli
 anno vicesimo supradicto, coram prefatis Iusti-
 ciarijs venerunt predicti I. L. R. M. & T. L. in
 proprijs personis suis, & habito auditu Indicta-
 menti predicti, separatim dicunt, quod ipsi non
 N n. i. sunt

Trauerse.

Iurie.

Day giuen.

Verdite.

sunt inde culpabiles, Et de hoc ponunt se super patriam: Et Adam Martin, qui pro Domina Regina in hac parte sequitur similiter &c: Ideo veniat inde Iurata coram Iusticiarijs dictæ Domine Regine ad pacem in comitatu prædicto conseruandam assignatis, &c. ad Sessionem pacis apud Welles, &c. die Martis proxime post Epiphaniam Domini tunc proxime futuro tenendam. Et qui, &c. Ad recognit. &c. Quia tam &c. Idem dies datus est tam præfato Adam Martin qui sequitur, &c. quàm præfatis I. L. R. M. & T. L. &c. Ad quas quidem Sessiones pacis, tentas apud W. prædict. in comitatu prædicto die &c. Coram Domino T. P. G. N. & H. P. milit. & socijs suis Iusticiarijs dictæ Dom. Regine ad pacem in comitatu prædicto conseruandam, Necnon ad diuersas felonias, transgressiones, & alia malefacta in eodem comitatu perpetrata audienda & terminanda assignatis, venerunt tam præfatus A. M. qui sequitur &c. quàm præfati I. L. R. M. & T. L. in proprijs personis suis, Et Iuratores prædicti per vicecomitem comitatus prædicti ad hoc impanellati, & exacti (viz.) Iacobus F. Gen. I. G. &c. similiter venerunt, qui ad veritatem de præmissis dicendam triati & iurati dicunt super Sacramentum suum, quod prædicti I. L. R. M. & T. L. culpabiles sunt, & eorum quilibet culpabilis est de transgressione, contemptu, & riotto prædictis in Indictamento prædicto superius specificatis,

cificatis, modo & forma prout ſuperius verſus
 eos ſupponitur: Ideo conſeſſum eſt per curiam, Iudgement,
 quod predicti I.L. R.M. & T.L. capiantur ad
 ſatiſſaciendum dict. Domina Regina de finibus Capias pro fine.
 ſuis occasione transgreſſionis, contemptus & ri-
 otti predict. Qui quidem I.L. R.M. & T.L. ad Ponunt ſe in
 tunc & ibidem preſentes in Curia petierunt ſe miſericordiam
 ad finem cum dicta Domina Regina occasione Regine.
 predicta admitti: Et inde ponunt ſe ſeparatim
 in miſericordiam D.R. Et aſſeſſatur finis eiuf- Fine aſſeſſed.
 dem I.L. per Iuſticiarios predictos, ad 3. libr. 6.
 ſol. 8. denar. Et finis eiufdem R.M. Aſſeſſatur
 ad 20. ſolid. Et aſſeſſatur finis eiufdem T.L. ad
 quinq. libras, bone & legalis moneta Anglia, ad
 opus & uſum dict. Dom. Regina.

And this is to be noted, that this Record Enditement
 was afterward remooued into the Kings void,
 Bench, and that the partie was diſmiſ-
 ſed there, for want of thoſe wordes
 in the Enditement, that you
 ſee vnderlined in other
 letters, in certaine
 partes of the
 ſame.

Of Triall vpon Arraignment, and
therewithall of the *Triall of Felonies*,
and what Pleas or other helps may
be vsed therein.

CAP. XIII.

Difference
betweene
Trauerse and
Arraignment.



Rraignment and Trauerse, do not
so much differ in the nature (or sub-
stance) of the Triall it selfe, as in
the order or vsage of the same. For
as there is no Enditement, Trauersable by
the partie, but that he may also be arraigned
vpon it: So likewise is there no enditement,
whereupon the partie may be arraigned, but
that he may also (if he will) tender his Tra-
uerse vnto it.

The difference then standeth in this, that
commonly he (which is to be arraigned) com-
meth in by compulsion of bond, or Processe,
and is touched with matter concerning life
and death, or some such hainous offence, and
pleadeth generally Not guiltie to the En-
ditement.

Commonly I say, because although he
come in freely, or be endited of some inferiour
offence, yet he may be neuertheles arraigned:
neither is he of necessitie driuen to plead Not
guiltie (which runneth to the fact) but may (if
the case wil suffer) plead a Iustificatio or mat-
ter in Law, though it be in case of Felonie.

It

It seemeth to haue borrowed the name out of the word Array, either of the pannell or Iurie: because he that is arraigned, must be tried by them, being first called, arraied, sworne, and tried, in order for that seruice: or els, of the array of the prisoners, that be perused and arraied in order before they come to triall.

If I should here rip vp, and prosecute at full (as the place offereth me occasion) the whole learning that belongeth to the Arraignment and Triall of Felons, as well for the taking of Challenge and pleading of Iustification, matter in law, pardon, an other time acquite, and an other time attaint: as also for the hauing of Sanctuarie, & sauing by clergie: I should but *Actum agere*, and yet not do it halfe so well as you may find it in M. Stanford: besides the which, I should endeouour to teach them, of whom I my selfe may better learne, seeing that the vse of these matters is either reserued till the comming of the graue Iustices of gaole deliuerie, or els is performed by other men of law that can enforce themselves sufficiently therein. And yet considering that these things do many times fall in vse, and that it were vnseemly for our Iustice of the Peace to be altogether ignorant therein, I wil shortly run ouer the, if first I may offer to consideratio a point or twaine, wherof it peculiarly behoueth our Iusti. to be aduertised.

Felonies not
triable before
Iustices of
Peace.

The first thing is, that there be sundry Felonies, and some Enditementes of Felonies also, the which (as it seemeth to mee) Iustices of the Peace can not heare, or trye at all : the second, that in the handling of those very Felonies wherewith they maye deale, there bee yet certaine considerations peculiar to the Iustices of the Peace onely, and not common to them with other Iudges.

Iustices of the Peace cannot heare the triall of the Felonie for vsing Witchcraft or Sorcerie, whereby any man is but onely hurt in body, or goods : because it is made Felonie by the Statute (5. Elizabeth, capitulo 16.) after a former conuiction onely : the power whereof is not committed to the Iustices of Peace : and so they can take no knowledge of the Record thereof, not being before themselves.

Of the same sort is that Felonie for Forgerie by the Statute (5. Eliz. ca. 14.) after conuiction for a former offence : and that Felonie (after a former conuiction also) for slanderous speech against the Queenes Maiestie, in offence of the Statute made 23. Elizabeth cap. 2.

Neither doth the hearing and triall of that Felonie of a seruant (taking the goods of his master

maſter after his death, belong (as I haue ſayd) to the Juſtices of Peace in the Countrey: becauſe they cannot take notice of his default in the Kings Bench, by which default it firſt beginneth to be Felonie: (33. Hen. 6. cap. 1.)

The like, though for unlike reaſon, is to be ſayd, of the Felonious embezelling of any the Records of the Courts at *Westminster*, againſt the Statute 8. Hen. 6. cap. 12. And of an Accessorie in one Countie, where the Felonie was done in an other Countie, vpon the Statute 2. & 3. Edward 6. capitulo 24. becauſe the iuriſdiction ouer theſe Felonies, is not committed to the Juſtices of Peace, but remitted to other Iudges, by the very ſame Statutes.

And ſo of the Felonie of conſpiring the death of the King, or of any Lorde of the Realme, or of any of the Kings Counſell, or of the Steward, Treafurer, or Controller of the Kings houſe, becauſe it is to bee tried by them of the Checkroll of the ſame houſehold. 3. H. 7. cap. 14.

Furthermoze, they cannot make Triall of ſuch as were endited of Felonie before the Coroners, or, before the Juſtices of Gaole deliuerie, or of Oyer and Terminer, if the ſame perſons were not Juſtices of Peace alſo in

the same Shire, so as the Enditelements may be understoode to be taken by them as before Iustices of the Peace; for their Commission and authority extendeth onely to such as stand endited, before themselves, or former Iustices of the Peace, or the Sherife in his Turne.

Things peculiar to Iustices of the Peace in the triall of Felonies.

Thus farre of the first point: Touching the second, it seemeth, by Marr. (and M. Fitzh. Fol. 16.) that albeist two Iustices of the Peace, (the one of them being of the *Quorum*) may heare and trie Felonies: yet no Iustices of the Peace haue authoritie to deliuer Felons, by proclamation, or without sufficient acquittall: nor yet to deliuer such as be in prison for suspicion of Felonie.

For they must proceede by enquiring, hearing, and determining, as their Commission appointeth them, & not ridde the Gaole otherwise, as the Iustices of Gaole deliuerie may doe. And therefore, such persons, (if they can not be endited) must eyther remayne the coming of the Iustices of Gaole deliuerie, as the common maner now is, or else (being remooued into the Kings Bench) they may be deliuered thence vpon the *Writ de gestis & fama*, as the old order was, or by such other meane as they vse at this day,

These Iustices can take no appeale of any approuer, nor other, before them, say all the Iustices of the Common place, 2.H.4. 19: and so

so is it clearely holden, 9.H.4.1: because their Commission stretcheth not so farre, but onely to such Felonies as fall out by Enquirie before themselves, or their former fellow Iustices, howsoever the booke (44.E. 3. 44. vpon the Statute, 5.E. 3. c. 11.) or the Statute (8.H.6.cap.10.) may seeme (to a running Reader) to allow that power vnto them. And therefore, as W. Stanford (fol. 95) doubteth of this matter: So I do assure, that the present forme of the Commission of the Peace, is (in that part of the last *Assignamus*) different from the course of the Commissions of those former times, wherein the determination of Felonies was expressely restrained to the only suite of the King: and so you may see it in the Records of the Tower, 15.Iul.13.R.2. *Patent. parte. 1. membran. 25.*

But howsoever that be, yet seemeth it to me no lesse reasonable, then seruiceable, that if one Felon will accuse an other before Iustices of the Peace, they may take his confession and reprie him, and thereupon cause the other to be enquired of, and so proceed agaynst him.

If furthermore, they cannot arraigne a man vpon his abiuration, saith Mar.

It hath also bene thought vnnmeet. that they should trie a felon the same day in which they awarded the *venire facias*, against the Iurie.

22. Ed. 4. 44. Fitzh. Tit. Corone 44: but that hath no necessitie, and the law is now otherwise taken,

Marrow saith, that they cannot award the *Writ, Venire facias tot matronas*, to trie whether a Woman (arraigned before them) bee with child, or no: but, seeing it standeth with law and reason, to stay her for the time (that the child may be preserved) I can not but doubt of his opinion.

They may giue Cleargie to a Felon, if the Ordinarie (or his Deputie) be present to take him: but if they be absent, he must be repried, because (as Marrow saith) these Iustices can set no fine vpon the Ordinarie, for his absence: no more, then if he will accept one to read as a Clarke, where in truth he cannot read at all. But if you looke vpon D. Stanford (lib. 2. c. 45.) he will perswade you, that the Ordinarie is not the Iudge, but a Minister, in the triall of Cleargie: and that Cleargie may lawfully be giuen and allowed in his absence.

Of the Fine for his default at these Sessions, I am doubtfull, as I haue said before: but touching the allowance of Cleargie to the offender, I see no cause at all, why it may not belong to the Iustices of Peace as well as to other Iudges: seeing that they be Iudges of the felony, as other Iustices are: and otherwise all men might be defeated of that priuiledge.

Marrow

Marrow saith also, that if Bygamie (that vngodly and popish counterplea) had bene alleaged against one that prayed his Cleargie, the Iustices of Peace could not haue written to the Ordinarie to certifie the same. But let that passe, as not worth the debating.

And if a man (outlawed of Felony by Processe before the Iustices of Peace) be brought before them, and do alleage, that he was (at the time of the Utlawie pronounced) out of the Realme in the Queens seruice vnder such a Capitaine: or that he was then imprisoned in an other Countie: they can neither write to the Capitaine, nor into the Countie, by the opinion of Marrow. Which if it be so, it shall be good to learne further, what they ought to do with the prisoner in such a case.

Thus much only, of things restraining the Iustices of Peace in the Triall of Felonies: wherein also they are not now adayes much occupied, the rather because they deferre it till the comming of the Iustices of Assise, by reason that the Statutes (1. & 2. Ph. & Ma. c. 13: & 2. & 3. Phil. & Mar. c. 10.) do enioine them, to Certifie at the next generall Gaole deliuerie, both the Examinations & bonds that they shall take, concerning Felons and suspects that are brought before them.

This I may adde (not as a restraint, but for an enlargement of the authoritie of Iustices
of

of the Peace) that if they see cause, & do write to the Clarke of the Crowne of the Kings Bench, for the names of any persons being or theretwhe attainted of Felonie by Vlawrie, or being clarks conuict or attainted: he ought (without delay, and vnder the paine of xl. s.) to certifie the same vnto them, together with the causes of such attainder, or conuiction, 34. H. 8. cap. 14.

These things thus premised, Let vs now suppose all impediment to be remooued, and set we the Felon at the barre, readie to take whatsoeuer aduantage of Challenge, plea, or other benefite that may be allowed vnto him.

Challenge.

It was euer permitted, that the Prisoner might challenge so many of the Iurie as he would (shewing lawfull cause for it) as namely, to say, that he (whom he chalengerth) was one of the Iurie which did endite him: for, of such an one it may be thought, that he will not falsifie his former oath. 25. E. 3. cap. 3: or to say, that he hath not lands of the cleare yeerely value of fortie shillings: for, such an one is disabled. 2. H. 5. ca. 3: except it be in Cities, or such other franchises, where the value is measured by fortie pound of goods mooneable. 23. H. 8. cap. 13: or to say, that he is not *probus*, or *legalis*, because he hath bene attainted of Felonie, Forgerie, Periurie, or of such like as are shewed before.

The

The common law hath also (in fauour of life) allowed vnto the prisoner his peremptorie challenge, without shewing any cause for it. But yet, forasmuch as it was long time doubtful, how many he might so challenge, the same was put into certaintie (by the Statute, 22. H. 8. cap. 14.) and restrained to the number of 10. persons at the most.

Now if the triall be of an Alien boorne (for Felonie, or Murder committed by him) the Iurie shall be *de medietate lingue*, that is, half of our Nation, and halfe of Strangers: except it be in the case of a Scot, whose Iurie shall be altogether English, as well because he speaketh our language, as also for that he is reputed a subiect, and not an alien. *Collectum Dyar.* 304: & 357.

This shortly of challenge: which is but dilatorie, and to winne time: and therefore let vs now heare what he may plead in chiefe as it were, and for the safetie of his life.

If the prisoner haue bene at any time before lawfully acquitted of the selfe same Felony, or haue bene orderly attainted of any other felonie, he may safely rest vpon it. For, as it is vnreasonable, to draw a mans life into double danger for one single offence: So is it also vnprofitable, to condemne him that is already attainted. *Corone Fitzh.* 132: & 28. E. 3. 90. And for the prooffe of either of these allegations,

An other time
acquitted.

CAP. 14. 558 *The 4. Booke.* Another time acquitted.
gations, the Iustices ought to allow vnto him
conuenient time for the bringing in of the Re-
cord of the court where he was so acquitted,
or attainted. *Corone, Fitzh. 232.*

But because each of these two points hath
his seuerall consideration in that which both
remainne, I also will hencefoorth handle them
apart.

If the prisoner be now arraigned of a Fe-
lonie, by the name of A. B. (by which name,
as also by the name of A. C. he is wel inough
knowen) then may he say, that he was be-
fore time acquitted of the selfe same Felonie,
before such, or such Iustices, by the name of
A. C. auerring that he is the same person,
and that he is knowen by the one and the o-
ther calling. *Lib. Ass. 26. pla. 15. & 11. H.*
4. 93. So, if he bee arraigned of the Mur-
der of a man (supposed by the Enditement
to be slayne in the 30. yeere of her Maiesties
raigne) he may plead, that he was before time
acquitted of the Murder of the same man, auer-
ring that he was slaine in some other yeere,
Lib. Ass. 22. pl. 55.

For, as in the former case, the same man
may beare two names: so, in the latter, one
person cannot be twise killed.

But if the Felon were first acquitted vpon
an Enditement, which did not comprehend
sufficient matter of Felonie in it: that will
not

not helpe him now, because his life was neuer put in ieopardie thereby: in so much as if he had bene found guiltie thereupon, yet the Court would haue deliuered him, Stanford 106. Howbeit, if the Enditement had good matter in it selfe, then may no Errour (committed in the Processe) take the benefit of this plea from him, seeing that he was arraigned vpon the Enditement, and not vpon the Processe. 9. Hen. 4. 2. & *Corone Fitzh.* 444.

Againe, if he that stole goods were acquitted in a Countie where he ought to haue bene tried for them, that is no lawfull acquitall to saue him from triall now: no more, then if a man were acquitted of murder in an Appeale, at the suite of a yonger brother during the life of the elder: that is of no such force, but that he shall be arraigned at the suite of the Queene againe, Stanf. 105. & 106: & 21. H. 6. 31.

Lastly, he that is acquitted as principall to a Felonie, may neuerthelesse be arraigned as an Accessorie (after the offence done) to the same Felonie: because it is not the same, but an other subsequent, and diuers offence. And yet, shall hee neuer bee arraigned, as an Accessorie (before the offence) to the same Felonie: because, (as I haue sayd heretofore) the Accessories before the offence,
be

be the very causes of the fact, & do (as it were) inseparably concurre with the principall, and be present with him in the doing of the same. lib. Ass. 27. pl. 10. & Stanf. 105.

Another time
attainted.

Now on the other side, since nothing can be had of him that is already attainted, and hath thereby lost whatsoever he might forsake: it hath always bene thought meet to allow him to plead it: and it is to no purpose to arraigne him of new, for that, or for any other Felonie, except it be in a special case, or two, for the benefit of other persons, which M. Stanford hath briefly noted for vs.

The first, is for the aduantage of the Queene: For, if he that is attainted of Felonie, hath also committed Treason, then may he be arraigned of the Treason, notwithstanding the former attainder, to the end that her Maiestie may haue her prerogative in the Escheat of all his lands, of whatsoever other lordes they shall be holden. 1. H. 6. 5. And yet, if that Treason were committed after the attainder for the Felonie, then (in the opinion of M. Stanf.) the title of Escheat (which by that attainder did accrew to the other lordes) can not be deuested and taken from them, by the subsequent Treason.

The second is, for the commoditie of Subjects, as in case where diuers men be robbed of their goods by a Felon: there (though he
be

be attainted at the suite of one) yet ought he also to be attainted at the suite of the rest: that each one of them may thereby haue restitution of his goods, whereof otherwise (for want of suite) he should be denied. Stanford. 165.

But now, if he that was thus attainted, do afterward obtaine pardon of that felonie whereof he was attainted, then is he restored to the law, and is made answerable to all other Felonies that were committed by him, before the time of that Felonie, whereupon his attainder was grounded. 6.H.4.68.

And if a man do commit two sundry Felonies, and (being arraigned vpon the one) standeth mute at the barre, and hath therefore his iudgement to be pressed: yet may he be arraigned vpon the other Felonie, notwithstanding the former iudgement: because it is none attainder at all, for his offence wherewith he was charged, but onely a punishment inflicted by the law, vpon his contumacie, & stubburne silence. Collection Dyar. 308.

With this there was woont to be matched Another time conuict. the plea, That the prisoner was another time conuict of Felonie, and deliuered to the Ordinarie to make his purgation: which also was of equall force (with the former) to saue him from new arraignment. But the lawe of our time hath woorthily taken that plea from

Do, i.

the

the offender, and the offender himselfe from the power of the Church.

For, as the allowance of the booke proceeded from the pride of Churchmen: Euen so were these conuicts ridiculously purged by them. For which cause, the Statute (18. Eliz. cap. 6.) hath ordained, not only that (after allowance of Cleargie, and burning in the hand) the prisoner shall be enlarged: but also that he shall be put to answer to all other Felonies, wherof he is not before acquitted, conuicted, attainted, or pardoned. And therefore, leauing it, let vs see how the offendour may be holpen by pleading, and praying allowance of the Queenes pardon.

Generall
pardon.

The pardon whereof the partie may haue aduantage, is either generall or speciall: by generall I do here meane that, which is giuen by Parliament to all men generally, or with the exception of some few persons. And of this pardon the court ought of dutie to giue allowance, though the partie neither plead it, nor will accept the benefit of it. But, if it make speciall exception of some persons, then must the prisoner alleage that he is none of those that be excepted, vnlesse the act it selfe do say, that he shall be holpen by it without any such pleading. 11. H. 4. 39. & Stanf. 103.

Touching this sort of pardon, I will only lay downe these few cases: The seruant (that
had

had killed his master) was endited of voluntarie murder, without the word proditorie, and was therupon arraigned, and found guiltie. But because the offence was petite treason in deed, and petite treason was then pardoned by the Parliament (5. Elizab.) though murder were therein excepted, Iustice Welsh thought it meet to reppie the prisoner, without giuing iudgement vpon him. Col. Dyar. 235.

A man stroke an other in Febr. (13. Eliz.) whereof he died in Iune next following, in which meane while all Felonies, offences, injuries, and misdemeanors, were pardoned by Parliament: and he was discharged by that pardon, because the stroke was the offence against the Queene, and that was past & pardoned though the death did afterward ensue vpon it. *Comment. 401.*

One that had committed Manslaughter, was endited of murder, and thereupon vtlawed: afterward, the parliament pardoneth all offences, &c. except persons vtlawed, or attainted of murder: the partie reuerseth the vtlawie, and then is arraigned of manslaughter: and it was much doubted, whether he should be discharged by the pardon, because the persons vtlawed were excepted, whereas if the offences onely had bene excepted, it would haue made no great question. 29. Eliz. Report Crompton.

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Speciall pardon.

The speciall pardon, ought to be pleaded vnder the great Seale of England: for, that authoritie which some subiects in auncient time had to graunt pardon, is resumed by the Statute, 27. H. 8. cap. 24.

And with this pardon, the partie ought to bring a Writ of allowance, testifying that he hath found suerties for his good port, according to the Statute, 10. E. 3. c. 2. Howbeit, that matter is many times dispenced withall, by meanes of a *Non obstante*, that may be put into the pardon. *Com. 502.* But let vs yet see, what the pardon hath within it.

If the pardon doe agree with the Enditement, as well in the name, surname, and addition of the partie, as also in the point of the offence that is to be pardoned: then is there nothing to be sayd against it. But, if the pardon be of all Felonies, that will not discharge him of petite treason, nor murder at this day (except it containe them in speciall wordes) although before the Statute (13. R. 2. stat. 2. c. 1.) such a pardon was auailable inough for them. Neither is such a pardon sufficient to saue the life of him that is attainted of Felony, vnlesse it haue words to pardon the attaindor, and execution. 9. Edw. 4. 29. No more, then a pardon of the attaindor and execution, will deliuer him without words to pardon the Felonie it selfe, 8. H. 4. 21. So, where the partie is abiured

abiured for the death of a man, the pardon must of necessitie carry wordes of abiuration.
Corone Fitzh. 124.

And if the Queene do pardon to a Gaoler, the escapes of prisoners being in his ward for Felonie or treason: that shall extend to negligent escapes onely, and to none other. *Grants, Fitzherb. 37.* So if she pardon two men all Felonies done by them, or any of them, that will not serue them apart, because the first wordes be ioynt, and not seuerall, whereas all felonies be of themselves seuerall. *22.E.4.7.* For, in all these, and the like cases, howsoever the fauour of life may desire liberall interpretation: yet (forasmuch as the offence is against law) the grace and dispensation of the Prince may not be strained beyond the wordes.

The last helps for the prisoner, be Sanctuarie and Cleargie, where his case will asoord him the one, or the other of the. If or, if he were taken out of Sanctuarie, he ought to pray (at the first) to be restored: and if he can read, he may (at any time) desire of the Iudge the allowance of his booke.

How each of these began at the first, and grew in time to be full summed, or how they shunke agayne, and how their garest fethers were at last (by one and one) pulled from the: I may not here stand to discourse, though it be a piece, woorthy both the handling & hearing.

Do. iii.

But,

But, forasmuch as our Statutes doe many times match these twaine together, I will likewise draw them forth, as I shal fall vpon them, shewing you where the one or the other, or both, be denied to the prisoner.

Treason.

In the case of Treason for counterfaiting of mony, there is none allowance of Clergie: for it is not giuen in any treason. 19.H.6.47.

Once, or more times.

Where Clergie lieth, it is grantable but once to one person, except he be within holy orders: for such an one may haue it often. 4.H.7.c.13: 1.E.6.c.12: & Stanf. 135.

Bigamy.

Bigamus, (that is to say, he which hath bene twice married, or which hath married a widow) may haue his clergie at this day, though in old time it were a good counterplea against it, Collect. Dyar. 201.

Bastard.

It was woont to be doubted, whether a Bastard might haue the benefite of clergie: because he could not be a Priest without speciall dispensation. Brooke, Bastardie. 46.

Woman.

And it was agreed by all the Iustices (2. & 3. Phil. & Mar.) that a woman shall haue none allowance of Cleargie: but she may haue (for once onely) the benefite of her belly, if it be found by women thereto appointed that she is with child. Report Dalyson.

Witches, &c.

Coniurers, or Witches, their aiders or counsellors, shal neither haue Sanctuarie, nor Clergie. 5. Eliz. ca. 16.

The

The Receiuers (or aiders) of Seminarie Iesuits, &c. priests, or Iesuites, are to be denied the fauour of Cleargie. 27. Eliz. cap. 2.

Such as conspire to burne, take or raze, &c. Take castles. any Castle or bulwarke of the Queenes, shall enioy neither Sanctuarie nor Cleargie. 14. Eliz. ca. 1.

We shall haue no Cleargie that committeth Rape: Burgh- any felonious Rape, Rauishment, or Burgh- larie. 18. Eliz. ca. 6.

Nor he which carnally and vnlawfully a- Rauish infant. buseth any Woman being within the age of ten yeeres. 18. Eliz. ca. 6.

Nor he which committeth the detestable Buggery. sinne of Buggerie. 25. H. 8. cap. 6: & 5. Eliz. cap. 17.

There lieth no Cleargie nor Sanctuarie for him, which committeth wilfull murder or poi- Murder. soning, of malice prepensed: or which rob- Poisoning. beth an other in, or nigh the high way: or Robbe in high way. which stealeth any horse or horses, gelding, Horse. or geldings, mare, or mares: or stealeth goods out of any Church or Chappel: or which breake Church. keth any house feloniously by day or night, a- House. ny person being in it: or which robbeth any person in any part of his dwelling house, himselfe, his wife, children or seruants, then being there, or within the precinct thereof, and being sleeping or waking. 23. H. 8. c. 1: 32. H. 8. c. 3: 1. E. 6. c. 12: 5. E. 6. c. 9: & 2. & 3. E. 6. ca. 33.

Robbe Booth
or Tent.

He which robbeth any person in any Booth, or Tent, in any Faire or Market, the owner, his wife, children, or any seruant the being there in, either sleeping or awake, is depriued of his Cleargie. 1.E.6.ca.12: & 5.E.6.ca.9.

Commaund
murder or
robberie.
Burne house
or barne.

Such as maliciously commaund, or hire any to commit petite treason, or wilfull murder, or robberie, in any dwelling house, or in, or neere any high way, or within the Marches of England against Scotland: or willingly to burne any dwelling house, or any part thereof, or any barne hauing coine therein, shall not be admitted to their Cleargie. 4. & 5. Phil. & Mar.ca.4.

Seditious
words.

If any shall report false rumors against the Queenes Maiestie, or shall deuise and write, or set forth any writing containing flaunders matter to her diffamation, or to the stirring of any insurrection: or shall procure any such writing to be set forth or published, shall not be admitted to his Cleargie. 23.Eliz.ca.2.

With the
Queenes
death.

Such as by Coniuration, Calculation, or other unlawfull meanes, shall seeke to know, and shal set forth by expresse word or act, how long the Queene shal liue, or who shal raigne after her death: or shal will, or wish her death, shall loose all benefite of Cleargie and Sanctuarie: and so shall their aiders, procurers, and abbetters. 23.Eliz.ca.2.

Souldior that
departeth.

Cleargie and Sanctuarie be taken from the
Soul-

Souldior that departeth without licence of the Lieutenant, or capitaine. 2.E.6.ca.2. & 4. & 5.Phil.& Mar.cap.3.

He that doth a Robberie or Burghlarie in one Countie, and is taken with the goods so robbed or stolen in an other Countie, shall loose his Cleargie there, as he should do where the robberie, or burghlarie was committed, 25.H.8.ca.3. & 5.E.6.ca.10.

Cary the goods into another countie.

Sanctuarie and Clergie be taken from him that secondly shall be convicted of the forging of false deeds, &c. 5.Eliz.ca.14.

Forgerie.

He which priuilegeth money or goods (ouer the value of twelue pence) from the person of an other, not knowing it, is denied cleargie. 18.Eliz.ca.4.

Cutpurse.

The Rogue that is attainted and committed to seruice, and departeth: or that after 40. dayes (next after he shall be twise put to seruice) doth the third time fall to a Roguish life, shall haue neither Sanctuarie nor Cleargie, 14.Eliz.ca.5.

Rogue.

Cleargie and Sanctuarie bee taken from him which calleth himself Egyptian, or which keepeth them company against the statutes, 1.& 2.Phil.& Mar.ca.4.& 5.Eliz.c.20.

Egyptian.

In all other cases (so farre as I yet find) the prisoner may enioy the priuiledge of Clergie: yea, and in euery of these Statutes also that do resume cleargie, if so be that the Endite-ment

A consideration touching Clergie.

ment do not expressly mention the offence in the very wordes of the Statute it selfe, the offendour may escape by his Clergie. For, if the Enditement be *Murdravit* onely, without saying *Ex malitia pracogitata*: or if it be, that he procured a Robberie in a dwelling house, without adding maliciously: or that he robbed one in the high way, and tooke x. shillings from his person, without shewing that he made Assault vpon him, or vsed violence vnto him: or if it be of Burghlarie, and do lack the word Burghlariter. Then (as M. Stanford warily noteth) the offence is not against the Statute, and consequently the benefite of Cleargie is not pulled from the offendour. Stanford. 130. Collection Dyar. 183. & 224.

A Scruple
concerning
Cleargie.

The same M. Stanford (about the same place of his booke) mooueth a doubt in this matter of Cleargie, very meete to be remembered here, and to be resolved in another place. When sundry of these Statutes which take away cleargie (in case where the offendour is convicted by the verdict of twelue men) doe speake nothing at all of his attainder by Vt-lawrie, or by Parliament: nor of his standing wilfully Mute: nor of his chalenging aboue twentie peremptorie, nor of his refusall to answere directly to the offence: It is to be considered (saith he) whether in these cases
also,

also, the Cleargie shall be denied vnto him. But since it becommeth not mee to determine, where he doubted, I will heere make an ende of our Triall, and proceede to Iudgement.

Of Iudgement.

C A P. XV.



The Iustices of Peace hauing thus sifted and tried the causes in hearing, either by the Evidence giuen to the Iurie, or by the examination of witnesses, or by Certificate allowed, or other lawfull, reasonable, and discreet prooffe, are now come to make an ende, and to determine of it. For I may well apply that to hearing and determining, which M. Bracton requireth to the making vp of a true Iudgement, that is to say, an equal and indifferent acceptation of the persons : an earnest examination and thorow search of the cause : a true deliuerie of the sentence : and a diligent execution of the same. Of these, the two first belong to hearing (or Triall) which we haue already handled : and the latter two be the very parts of determining, wherewith we haue now to deale. For Iudgement and Execution, do make an end of the cause in controuersie.

Now

You haue heard before, how *W. Fitzh.* collecteth a generall learning out of one speciall case in the Commission, I meane, that if any difficultie do arise in determination vpon Trial, the Iustices of Peace are restrained to proceed to iudgement: and you may read (6. H. 7. 16.) that if a *Certiorari* be brought to the Iustices of Peace, they are staied (by the opinion of Keble) from determination, although the Record be not thereby remoued from them.

But admitting that there is none impediment, let vs heare their iudgement.

Iudgements
by discretion.

The Iudgements then of the Iustices of Peace, be in some cases arbitrarie (or referred to discretion) and in other some cases prescribed or limited. Of the first sort, take this one (or two) for all.

False token.

He that is orderly convicted before them in their generall Sessions, of the deceitfull getting of any goods into his hands, by means of any false token or counterfeit letter (made in the name of any other) may be adiudged by them to suffer imprisonment, standing on the pillorie, or any other corporall paine, that they shall appoint, except the paines of death, 33. H. 8. cap. 1.

Seruant.

And that Seruant, Workeman or Labourer, that shal so wilfully and maliciously make assault or affray vpon his master or maistresse, or other that then shall haue charge ouer him,

as

as that he shall deserue further punishment then the imprisonment of one whole yeere, may be put to such further open punishment (so as it extend not to life nor limme) as the Iustices of Peace in open Sessions shal thinke conuenient, 5. Eliz. cap. 4.

Their prescribed Iudgements be of sundry Prescribed
formes, according to the natures of the offences Iudgements.
(whereof they haue to iudge) which be diuers also.

For, vpon the Treason of counterfaiting the coine of this Realme, they are to adiudge that the offendor (if he bee a man) shall be drawen and hanged, onely : Dyar. Upon petit Treason committed by a man, the sentence ought to be the very same also : But against a woman, the iudgement is all one whether it be in high, or petit treason, that is to say, that she shall be drawen and burned. Stanf. 182.

Against Murder, and other Felonies, they must pronounce the onely vsuall iudgement, of hanging till death, in both the sexes. Upon such as be conuicted of Trespases, contempts, riots, and such other offences, whereupon no certaine forfaiture is laied by Statutes, they must adiudge, that they be taken and ransomed, and so to satisfie the Queene for their offences, by making their fines : and vpon offendors against such penal lawes as do inflict any certaine paine, they ought to adiudge as
the

Forestalling.

the statutes themselves do direct their course. For, upon conviction of the first offence, against the statute of forestalling, (5.E.6. cap. 14.) they must award imprisonment for two moneths without Baile or Mainprise, and the forfeiture of the value of the goods so had: upon the second attainder (or conviction) such imprisonment for 6. moneths, and the double value of the goods: and upon conviction of the third offence, they must give sentence that the offender be set on the pillorie, and to forfeit all his goods, and further to have imprisonment of his body during the Queenes pleasure.

Convey
sheepe.

Against him that shall bring, or procure to be brought into any ship, any kind of sheepe, being alive, to bee conveyed out of any the Queenes dominions, they ought (for the first offence) to adiudge, that he shall loose all his goods to the Queene, and suffer imprisonment by the space of one whole yeere, without Baile or Mainprise: and that at the yeeres ende, he shal (in the full market of some market towne) have his left hand stricken off, and nailed upon the openest place of such market, 8.El.c.3.

Taking of
Deere, or
Hawkes, &c.

Against him, that is convicted for the unlawful taking or slaying of any Deere, or for such taking of any hawke, or egges of hawke (contrary to the statute, 5.El.c.21.) they must adiudge treble damages to the party grieved, three moneths imprisonment of the body of the

the offender, and (after that expired) to finde suerties of his good behauiour for seuen yerres after, or else to remaine in prison vntill he shall find such suerties during those seuen peeres.

And vpon Certificate made at the next Alehouse, Quarter Sessions of the Peace, by two Iustices of the Peace (the one of them being of the *Quorum*) against him that shall obstinately keepe an Alehouse, contrary to the Statute, (5. Edw. 6. cap. 25.) the Iustices of the Peace ought (in the open Sessions) to asseesse the fine of xx. shillings: the which I do purposely reherse, because they are there warranted to Asseesse the fine, without procelle first made against the offender, vnlke to the common order of assessing fines, as you shall see when I come to that matter.

It were more laboursome, then profitable, to runne ouer the diuers Iudgements that Statutes do appoint, and it may suffice in this place to haue giuen this taste of these few, and therefore I will in hand with Execution.

Of the Proceſſe for the Fine of
the *Queene*, and of the aſſeſſing there-
of: and of *Eſtreating* for the *Queene*.

CAP. XVI.



Seeing that Execution is but a per-
formance of the Iudgement, I ſhall
not need to make long enumerati-
on of the ſortes of executions, which
are within the power of the Juſtices of Peace.
For, beſides that by the knowledge of the
one, the other is known alſo, the Juſtices of
the Peace themſelves haue in many caſes
performed their dutie in both; when they
haue in the one pronounced that which is due
to the offender.

Execution for
the *Queene*.

Howbeit, forasmuch as that which they are
to do by way of Execution, offereth profite, ei-
ther to the *Queene*, or to her ſubiect: and
that which pertaineth to the *Queene*, is
brought about, either mediately, firſt by Pro-
ceſſe (or imprisonment) for the Fine: then by
Aſſeſſing of the Fine: and laſtly, by *Eſtreating*
the ſame: or elle immediatly, by *Eſtreating*
of the penaltie and forfeiture: I wil firſt
beſtow a few words vpon the Fine & *Eſtreats*
for the *Queene*, and then ſpeake of the benefit
that belongeth to the ſubiect.

Where the Conuiction is for Treaſon &
gainſt the Peace, Riots, and ſuch other Con-
tempt

tempts and offences against the Commission
of Statutes, for the which no certaine Fine is
appointed: there (as you haue seene already)
the iudgement is, That the partie shall be ta-
ken to satisfie to the Queene her Fine. And
thereupon, the *Capias pro fine*, and (if the par-
tie cannot be found) other Iudiciall Processe
goeth out, till he be Uelawed: vnlesse it be in
a very few cases, where (by the words of the
Statutes themselves) they may proceed to as-
sesse the Fine in the absence of the parties,
without calling them by any Processe: for, so
it standeth in the statute of Alehouses, 5.E. 6.
cap. 25. (as I told you euen now) and in the
statute of High waies, 5.El.ca. 13.

But if the partie be brought in, then is he a
prisoner, and then are the Iustices of Peace (by
their discretion) to assele the Fine, & to estreat
it, and deliuer him.

For in no case (as I take it) can they of the-
selves leuie any Fine or forfeiture, due to the
Queene: insomuch as not they, but the Shi-
rife is accountant for all such matters.

The imprisonment that I speake of, is one Imprison-
ly to the end that the Queene may haue the ment.
Fine: and therefore, vpon the paiment thereof
(or vpon pledges found by Recognisance to
pay it) the offender ought to bee deliuered, 2.
Mar. Brooke, Imprison. 100.

Whereof also the Fine tooke first his name,

¶ p. i,

of

Of the Proceſſe for the Fine of
the *Queene*, and of the aſſeſſing there-
of: and of *Eſtreating* for the *Queene*.

CAP. XVI.

Seeing that Execution is but a per-
formance of the Iudgement, I ſhall
not need to make long enumerati-
on of the ſortes of executions, which
are within the power of the Juſtices of Peace.
For, beſides that by the knowledge of the
one, the other is knowne alſo, the Juſtices of
the Peace themſelves haue in many caſes
perſourmed their dutie in both, when they
haue in the one pronounced that which is due
to the offender.

Execution for
the *Queene*.

Notwithſtanding, forasmuch as that which they are
to do by way of Execution, offereth profite, ei-
ther to the *Queene*, or to her ſubiects: and
that which pertaineth to the *Queene*, is
brought about, either mediately, firſt by Pro-
ceſſe (or imprisonment) for the Fine: then by
Aſſeſſing of the Fine: and laſtly, by *Eſtreat-*
ing the ſame: or elſe immediatly, by *Eſtreat-*
ing of the penaltie and forfeiture: I wil firſt
beſtow a few words vpon the Fine & *Eſtreats*
for the *Queene*, and then ſpeake of the benefit
that belongeth to the ſubiect.

Where the Conuiction is for *Treſpaſſes* &
gainſt the Peace, Riots, and ſuch other Con-
tempt

tempts and offences against the Commission
or Statutes, for the which no certaine Fine
appointed there (as you haue seene already)
the iudgement is, That the partie shall be ta-
ken to satisfie to the Queene her Fine, And
thereupon, the *Capias pro fine*, and (if the par-
tie cannot be found) other Iudiciall Processe
goeth out, till he be Uclawed: vnlesse it be in
a very few cases, where (by the words of the
Statutes themselves) they may proceed to as-
sesse the Fine in the absence of the parties,
without calling them by any Processe: for, so
it standeth in the statute of Alehouses, 5.E. 6.
cap. 25. (as I told you euen now) and in the
statute of High waies, 5.El.ca. 13.

But if the partie be brought in, then is he a
prisoner, and then are the Iustices of Peace (by
their discretion) to assesse the Fine, & to estreat
it, and deliuer him.

For in no case (as I take it) can they of the-
selves leuie any Fine or forfeiture, due to the
Queene: insomuch as not they, but the Shi-
rife is accountant for all such matters.

The imprisonment that I speake of, is one Imprison-
ment, to the end that the Queene may haue the
Fine: and therefore, vpon the paiment thereof
(or vpon pledges found by Recognisance to
pay it) the offender ought to bee deliuered, 2.
Mar. Brooke, Imprison. 100.

Whereof also the Fine tooke first his name,

10 p. i,

of

Difference
betweene
Fine & Amer-
ciament.

of the Latine *Finis*, because it maketh an end with the Queene, for the imprisonment laied vpon the offence committed against her Law.

And in that respect chiefly, doth it differ from an Amercement: If or when the offender hath not so deeply trespassed, that thereby he deserueth any bodily punishment at all (as if he be *non suit* in an action, or doe commit any such like fault) he is sayd to fall into the Kings Mercie, because he is therein mercifully to be delt with: and by the Great charter (cap. 14) that Amercement and summe of mony which he is to pay for the same, ought to be assaied and assaied by the good and lawfull men of the neighbourhood, which also Glanuil. lib. 9. cap. 11. affirmeth to haue bene the Law of the land long before that time, saying, *Misericordia Domini Regis est, qua quis per iuramentum legalium hominum de Viceneto, eatenus amer- ciandus est, ne aliquid de suo honorabili contene- mento amittat.*

But where the offence or Contempt faileth out to be so great, that it asketh the imprisonment of the body it selfe, and that during the Kings will and pleasure: then is the partie to redeeme his libertie with some portion of money, as he can best agree with the King, or his Iustices for the same: which composition, is properly called his Fine, or his Raun- some, and in Latine *Redemptio*, as may be plainly

plainly seene by the Statute of *Marleb.* 52. H.3.ca.1.2.3. & 4: and by the statute called *Ragman*, and diuers other auncient statutes. Where (by the way) it seemeth by the propertie of the word *Redemptio*, that the partie offendor ought first to be imprisoned, and then to be deliuered (or ransomed) in consideration of his Fine. And where any Statute speaketh of Fine and Ransome both, (as 38.E.3. ca. 9. and others do) it is taken, that the Ransome ought there to be at the least treble so much as the Fine. Collect. Dyar. 232.

But now of later time, the Iustices themselves haue in some cases of Amerciaments also, vsed to asseesse and rate the same without any other helpe: As where the Officers of their Courts haue offended, 33.H.6.54: 34. H.6.20: & Lo.5.E.4.5. which also seemeth to make another difference betwene the two words. But because neither of these be strictly obserued, either in common speach, or in the vnderstanding of the latter Statutes, I will no longer stand vpon it.

Now then, if the offence be Fineable, by generall words onely, without speaking of any Fine, or without shewing by whom the Fine shall be asseessed (for so it is commonly in the elder Statutes that do prohibite any thing to be done) there the asseessment thereof belongeth to the Iustices before whom the Conuiction

Fine, by discretion of the Iustices.

is lawfully had.

Againe, if it be Finable by these (or such like) wordes, At the Kings will, or At the Kings pleasure (as you shall find it in many Statutes) then also the same Iustices (before whom the Conuiction was) shall aslesse the Fine at their wilis and pleasures: For (say the Bookes, 2.R. 3. 11 : & 18.H. 8. 1) the King (in all such cases) uttereth his owne wil and pleasure, by the mouthes of his Iustices.

And yet some statutes (vsing plainer speech) do namely referre the Fine to the discretion of the Iustices of Peace.

Destroy the
Fry of Fish.

For they may (after Conuiction before them) set Fine by their discretions vpon such as take Salmons, or destroy the Fry of Fish in Riuers, against the Statutes, W. 2. cap. 47 : 13.R. 2. c. 19 : & 17.R. 2. c. 9. And as this is sayd of the Fine, so sundry statutes do giue the same power to the Iustices of Peace, in the execution of the corporall punishment it selfe : as you haue already heard in the case of counterfeiteris of false letters or tokens, and may read in other the statutes at large. For, I labour to bee short, and therefore I giue but an assaie of each thing, knowing that these Iustices will not proceed to the execution of any statute, without the sight of the statute it selfe, howsoever they should find it alleaged by me.

And in these cases (euen as in cases of Amerce:

mercements) the Iustices ought to take heed, that the Fines be reasonable and iust, hauing regard to the quantitie of the trespassse, and to the causes for which they be made, as it is commanded by the Statute, 34.E.3.ca.1.

But this Fine (or paine) awarded by the discretion of the Iustices of Peace, shall do the more good, both to the Prince in profite, to the people in example, and to the Iustices themselves in credite, if it be pronounced at the Bench openly (as it ought to be) and not shufled by in a chamber (or corner) secretly, as in some places it hath bene vsed to be.

I haue heard, that euen in cases where the Statutes do appoint a certaine forfeiture (as five pounds, or ten pounds, &c.) yet the practise is, to mitigate the same by discretion, if so be that the partie will come in vpon the Contemnt, and put himselfe *in gratiam Regine*, with confession of the fault, or without it as I haue told you before. So that the Fine shall be small, where the fault was great, and the penaltie of the Law it selfe not small.

But this maner of doing is (in my mind) so void of sound reason, that I cannot recommed it to the Iustices of Peace, but do rather condemne it as a mockerie of the law. Vea I find that sundry Statutes (feearing belike some such thing) haue specially preuented it, commaunding that Iustices of the Peace shall asseesse no

lesse Fine, then is in those Statutes themselves before hand appointed.

Such is the Statute (17. Ed. 4. cap. 4.) of Tiles: the Statute (33. H. 8. ca. 6.) of crossebowes and handgunnes: and the Statute (5. E. 6. cap. 25.) concerning Alehouses: and such others may be found, if the bookes of Statutes be well perused.

And althougħ it may seeme good husbandrie, to take such a Fine by a maner of confession before conuiction, rather then to hazard the losse of all the profite that may come to the Queene thereby (as in deed that must ensue, if no conuiction be had) yet who seeth not, that the other way is much more seruiceable, and that this is but to looke thorow the fingers (as we say) and to strike or flap at a fault with a Fore taile, and none other:

Estreating for
the Queene.

But hitherto we haue not sufficiently performed that, which the Commission of the Peace hath in these words, *Saluis nobis amerciamētis, & alijs ad nos inde spectantibus*: and therefore, it is not inough to haue assessed the Fine, but we must also disclose the meanes by which, as well this Fine (that is reduced to certaintie by the discretion of the Iustices) as all other Amerciamentis, and those other penalties and forfeitures also that are certainly predefined by words of the Statutes, may be leuiued and brought into the Queens coffers.

Order

Order was taken by an auncient Statute, (intituled *de Scaccario*, and noted to be made 51.H.3.) that all Iustices, Commissioners, and Enquirers whatsoeuer, should deliuer in to the Eschequer (at the feast of S. Michael peereclly) the extracts of Fines and Amerciaments, taxed and made befoze them, that the King might be duly answered thereof. And the same (in effect) was after ward confirmed by an other Statute, entituled, *De forma mittendi extreta ad Scaccarium*, which although it be sayd to be made 15. E. 2: Yet, forasmuch as it mentioneth that the former Statute was made in the time of the father of the same King which made the later, it must needs be, that either the one or the other of them was made in the time of King Ed. 1.

No doubt, but this ordinance doth extend to the Iustices of Peace, as a man may easily gather by words in the Statute of Labourers, 5.Eliz.ca.4: and by the act of Sewers. 13.Eliz.ca.9. and other Statutes: But because it is very generall, and hath nothing peculiar vnto them from other Iustices, It will descend to lower times, and looke there for neerer helpes.

The Statute (12.R.2.c.10.) had allowed to euery Iustice of the Peace foure shillings by the day, for the time of their Quarter Sessions, to be paid (by the hands of the Shirife) of

the Fines and Amerciaments comming of the same Sessions. But, because it was soone after seene, that it was a great delay to the Iustices of Peace in this payment, to expect the leuying of these Fines and Amerciaments by Estreats, first sent v^y to the Eschequer, and then deliuered thence to the Shirife (which was at that time the common maner, of leuying Fines and Amerciaments) therefore it was within two peeres after (*viz.* 14.R.2.c. 11.) provided, that the Estreats of the Iustices of Peace should be indented (or doubled) and the one part thereof deliuered by them to the Shirife to the intent that he may leuie the money thereof rising, and pay the Iustices their wages by Indenture between him and them to be made, and the Barons of the Eschequer may charge and allow him vpon the making of his account accordingly.

And hereby (as I thinke) the Estreats of the Iustices of the Peace be now an immediat warrant for the Shirife, to leuie, not onely the Fines and Amerciaments, but also all other Issues, Penalties, Losses, Forfeitures, and Summes whatsoever, arising before them: for the wordes of the Statute are generall, The money thereof arising: and therefore, whatsoever summes are to be Estreated into the Eschequer, the same are also to be leuied by the Shirife.

Such

Such order did the statute take (33. H. 8. c. 10. of the six weekes Sessions) for the leuying as well of Fines and Amerciaments, as of Paines, Losses, and Forfaitures of money: So doth the Statute of Tillage (2. & 3. Phil. & Mar. ca. 2.) by way of admittance rehearse, that Iustices of the Peace may make out Procelle for the leuying of Fines and forfeitures before themselves: and so are the Estreats made, (for the most part) and the Fines and forfeitures therby leuied at this present time, if I be not deceined.

And these are properly called Estreats, of the word *Extracta*, because they be short notes (or Remorials) extracted (or drawen) out of the Records, by the Clarke of the Peace, and by him indented and deliuered sunderly to the Shirife, and to the Barons of the Eschequer, bearing this (or the like) Title, *Extract. finium, & amercamentorum foris factorum, ad generalem Sessionem Pacis, tentam apud Maidstone, &c. Coram, &c.* For the whole forme of the making wherof, there is full direction giuen to all Clarke of Estreats, by the statute, 7. H. 4. ca. 3. Whereunto I referre them.

Howbeit, I do not thinke that in our case, this dutie of Estreating is so peculiar to the Clarke of the Peace, but that the Iusti. of the Peace themselves, ought also to haue a common and careful eie vnto it: For (if you remember)

Iustices of the Peace ought to haue care of Estreats.

it

it is both specially provided for in the Commission, and also an Article of their Oath, to see vnto the faithfull Entrie and Certificate of the Iustices, Fines, Forfeits, and Amerciaments, that do happen before them. And therefore, it were well done (in mine opinion) if the Iustices would, by turne (or otherwise) both take knowledge of things that haue passed before them, and also take order that the same be certified accordingly: least otherwise it lie altogether in the power of the Clarke of the Peace to Saue or Slay (as one sayd) the Sparrow, that he holdeth closed in his hand.

Of Executorie Proceffe, and execution for the parties that sue, or for other persons: and of restitution of goods stollen.

CAP. XVII.

Albeit that the Iustices of Peace haue this power, to make warrant for leuying the Amerciaments, Fines and other Forfeits that doe grow vnto the Queene by their seruice: yet is it commonly thought, that they may not, (but in some cases onely, and that by special speech of the Statutes) make execution (either for him that will sue, or for any other) of such part of the forfeiture, as the law doth affoord them.

If or

For (most commonly) the partie that will Apparell. —
 sue, is put to his Action at the Common law,
 for recouerie of that which he is to haue: as,
 for his moitie of a forfaiture against the Sta-
 tute (24.H.8.cap.13.) of apparell, he is per-
 haps driuen to his Action of Detinue: for his
 moitie growing vpon conuiction of any of-
 fence, contrary to the Statute (13.Eliz.c.14)
 concerning byrning ouer of Bowstaues, or Bowstaues...
 contrary to the statute of Musters, (4.& 5.Ph. Musters.
 & Mar.ca.3.) he is to commence his Action
 (or Bill) of Debt: and so of sundry others, that
 are each where to be found. But where they
 haue power, either by their Commission, or by
 any statute, to heare and determine any cause
 at the sute of a priuate person, I doe not see
 how the cause can well be sayd to be fully de-
 termined, till the complainant hath had the
 effect of his sute, which cannot be without exe-
 cution.

Doublelesse, by speciall prouision, made in Forefallers.
 the Statute (5.E.6. cap.14.) agaynst Fore-
 fallers, the Iustices of the Peace may make
 execution of the one moitie of the forfaiture for
 him that sueth, by *Fieri facias*, or *capias*, as the
 Queenes Iustices at Westminster vse to do.

The like power, in like wordes haue they,
 for leuying the moitie of any forfaiture a- Armour.
 gainst the statute of Armour, made 4.& 5.Ph.
 & Mar. cap.2. or against the Statute (made
 5.Eliz.

5. Eliz. ca. 12) concerning Badgers, Drouers, &c. and their licences.

Liueries.

For the moitie growing to the Informer vpon the statute of Liueries (8. Ed. 4. cap. 2.) they shall make such execution, as ought to be had in Recoueries of Debt or Trespasse, at his owne pleasure.

Flaxe and Hempe.

They may also a ward execution for the partie that sueth vpon the Statute of Flaxe and Hempe (24. H. 8. cap. 4.) by such Processe as to them shall seeme by their discretion,

Highwayes.

And the Estreates (made by the Clarke of the Peace) of forsaits for defaults of amending high wayes, are a sufficient Warrant to the Constables to leuie the same by Distresse to the vse of the Churchwardens of the Parish where the default was, towards the amendment of the sayd wayes, 2. & 3. Phil. & Mar. c. 8: & 5. Eliz. ca. 13.

Shirifs Turne.

And likewise, the Estreats of the Iustices of Peace (of any Fines assessed by them vpon Presentments in the Shirifes Turne) being inrolled, indented, and deliuered to the Shirife, are a good warrant vnto him to leuy the same to the vse of him that was Shirife at the time of such Presentments taken, 1. E. 4. ca. 2.

Issues.

So, may Iustices of the Peace a ward processe of Execution, for leuying the forsaitures, vpon offences against the Statute (27. El. c. 7.) of Issues lost by Iurors,

So,

So, vpon the statute of Periurie, 5. Eliz. ca. Periurie.
 9: vpon the statute (5. E. 6. ca. 4.) for drawing
 of weapon to strike in church, or churchyard, Striking.
 And peraduenture search wil afford you some
 mo examples: but these may suffice for my de-
 sire, which is not (in this, or any the like) to re-
 count all, but to make good prooffe of that
 which I offer and propound, that the Iustices
 and Clarke of the Peace, may thereby take
 occasion to looke vpon the Booke, whatsoe-
 uer execution is praied for any cause, depen-
 ding before them vpon whatsoeuer Statute.

And because the awarding of restitution of Restitution of
 goods stollen to the owner, or partie robbed, goods stollen.
 (after the attainder of a Felon by reason of
 the euidence giuen by them) is a maner of ex-
 ecution for the partie: I may without violence
 bring hither the effect of the statute made vpon
 that point, and lying within the authoritie
 of Iustices of the Peace: which standeth thus.
 If any Felon of goods, money, or cattels (ta-
 ken from any of the Kings subiects) be endi-
 ted, arraigned, and found guiltie thereof, or
 otherwise attainted, by reason of *Evidence*,
 giuen by the partie robbed, or the owner of
 the sayd goods, money, or cattels, or by any
~~other~~ by their procurement: Then shall
 such partie or owner be restored thereunto:
 and the Iustices (before whom such finding
 guiltie, or such attainder shall be) shall haue
 power

power to award Writs of Restitution there-
fore : 2 I. H. 8. ca. 11.

Of Certifying the Records of
the Sessions of the Peace, to other
Courtes or Officers.

CAP. XVIII.

A wee haue already manifested,
that Iustices of the Peace haue not
a sufficient and thorow power (of
themselves) to heare & determine
all causes whereof they haue in their Sessions
authoritie to enquire : So also be there sundry
things determinable before them there, which
nevertheles may (in some respects) be brought
to a second handling : either to the end to re-
uerse that which they haue done, or that their
doings may be an euidence and testimonie in
the triall of causes before other Iudges.

And because this cannot in any sort be per-
formed, without the presence of those former
Records (or the transcripts thereof) which be-
gan with the Iustices of the Peace : it is there-
fore requisite, that they do make Certificate of
them vnto those other Courts, or officers, that
shall be interested to vse the same.

But, as this Certificat ought in some cases
to be made by the Iustices of the Peace, (or
their Clarke) without any Writ of *Certiorari*
therefore

therfore directed: and in some other cases they may spare to Certifie, untill that Writ (or some other cominaundement) be brought vnto them: So also sometimes they are to certifie and send by onely a Tenor (or Transcript) as I sayd, of the Record before them: and sometimes the very Record it selfe must bee comieied from them.

The Clarke of the Peace must (vnder the paine of fortie shillings) certifie into the Kings Bench, a true Transcript of euery Attainder, Uelawye, and Conuiction (had before Iustices of the Peace in any place, except *Wales, Chester, Lancaster, and Durham*) within 40. dayes after, if it be then Terme: and if not, then within xx. dayes after the beginning of the next Terme: that the same may there also appeare of Record, to be vled as that Statute hath appointed if there be cause.

Certifie without the Writ of Certiorari.

And he must also deliuer to the Ordinarie, a Transcript of Clarkes conuicted or attained, before the sayd Iustices, 34. H. 8. cap. 14. But enquire whether this last be needfull at this day, by reason that Clarkes be not now deliuered to the Ordinarie, by the Statute. 18. El. cap. 7.

And if a principall be attainted of murder, or Felonie in one Countie, whereunto an other is accessarie in an other Countie: then upon writing from the Iustices of Gaole deliuerie,

tie of these Iustices to be determined.

These be moreouer called the Quarter Sessions, because they bee holden Quarterly or foure times in the yeere: and the Statute (4.H.7.ca.12.) termed them principall Sessions, for that in them chiefly the power of Iustices of the Peace doth shine and shew it self: in which respect 27.El.ca.19. and some other Statutes do giue them the name of open Sessions also.

But we shall not neede to dwell vpon the names, whercof there can be no great controuersie, seeing that they all doe aime at one marke: rather (because these generall Sessions be at this day diuersly summoned, begun, and continued, in diuers parts of the Realme) it lieth sicly in my way, to make examination of that diuersitie in this doing.

How many
Sessions.

For (to begin with the Summons) the manner is (in some Shires) to summon peeresly fire standing Sessions of the Peace: in others 8: in others 12. or 16: and in others oetherwise.

All which is done, chiefly vpon pretence to ease the inhabitants of the Countie, for whom it would oetherwise be very painefull to trauel so often and farre, from all the partes of the Shire to any one place of the same.

And therefore, such as do maintaine 6. or 8. Sessions, do vse to summon all the whole Shire to a comyle of them, and to the residue they call onely

onely such partes of the Shire, as they do ther-
fore specially appoint: But yet so, that (upon
the reckoning) each corner of the Countrey gi-
ueth attendaunce at foure severall Sessions:
which also farther out accordingly in those
Shires where they haue 12. or 16. Sessions.

For albeit that they do not at any one time
summon the whole Shire to any one place (as
the others do) yet, diuiding their Shire into 3.
or 4. partes, and keeping foure severall Sessi-
ons in each of those partes, they also (as well
as the other) doe serue their whole countrey
with foure sundry Sittings. And therefore (in
mine opinion) although none of these doe fo-
low the precise letter of the law (which requi-
reth but onely foure quarter Sessions in any
Shire) yet euery of them draweth neere to the
true meaning of the law, which looketh for no-
thing else but that the Court of these Sessi-
ons should yeerely bee foure times opened
for the whole Countie.

But if there be any that do (for this pur-
pose) diuide their Shire into halfes, and doe
hold onely foure Sessions in the yeere, that is
to say, two in the one part, and two in the other,
calling the one halfe of their Hundreds to
those two Sessions at the one place, & the other
halfe to the other two Sessions holden at the o-
ther place: These men (as some haue thought)
do neither retaine the letter, nor attayne
the

power to award Writs of Restitution there-
fore : 21.H.8.ca.11.

Of Certifying the Records of
the Sessions of the Peace, to other
Courtes or Officers.

CAP. XVIII.

AS wee haue already manifested,
that Iustices of the Peace haue not
a sufficient and thorow power (of
themselves) to heare & determine
all causes whereof they haue in their Sessions
authoritie to enquire : So also be there sundry
things determinable before them there, which
neuertheless may (in some respects) be brought
to a second handling : either to the end to re-
uerse that which they haue done, or that their
doings may be an euidence and testimonie in
the triall of causes before other Iudges.

And because this cannot in any sort be per-
formed, without the presence of those former
Records (or the transcripts thereof) which be-
gan with the Iustices of the Peace : it is there-
fore requisite, that they do make Certificate of
them vnto those other Courts, or officers, that
shall be interested to vse the same.

But, as this Certificat ought in some cases
to be made by the Iustices of the Peace, (or
their Clarke) without any Writ of *Certiorari*
therefore

therfore directed: and in some other cases they may spare to Certifie, untill that Writ (or some other commaundement) be brought vnto them: So also sometimes they are to certifie and send vp onely a Tenor (or Transcript) as I sayd, of the Record before them: and sometimes the very Record it selfe must bee comieied from them.

The Clarke of the Peace must (vnder the paine of fortie shillings) certifie into the Kings Bench, a true Transcript of euery Attainder, Uelawie, and Conuiction (had before Iustices of the Peace in any place, except *Wales, Chester, Lancaster, and Durham*) within 40. dayes after, if it be then Terme: and if not, then within xx. dayes after the beginning of the next Terme: that the same may there also appeare of Record, to be vsed as that Statute hath appointed if there be cause.

Certifie without the Writ of Certiorari.

And he must also deliuer to the Ordinarie, a Transcript of Clarkes conuicted or attained, before the sayd Iustices, 34.H.8. cap.14. But enquire whether this last be needfull at this day, by reason that Clarkes be not now deliuered to the Ordinarie, by the Statute. 18.El.cap.7.

And if a principall be attainted of murder, or Felonie in one Countie, whereunto an other is accessarie in an other Countie: then vpon writing from the Iustices of Gaole deliuerie,

uerie, or Oyer and Terminer, to the *Custos Rotulorum*, (whete such principall is attainted) he must certifie in writing vnder his Seale to the said Iustices, whether such principall be attainted, or otherwise discharged, or not: that they may proceed therupon to the triall of the Accessarie, 2.E.6.ca.24.

But, in cases where Iustices of the Peace haue power to receiue Enditementes, and no power to proceed any further vpon thē (where of you haue already the examples, in the 7. chapter of this present booke) there they ought to send vp and certifie the Enditements themselves, that of dutie (as I thinke) without any *Certiorari* commaunding the same: because, hauing none authoritie to heare and try the offences, the Records thereof shall be vnprofitable before them: and therefore they can haue no iust cause to retaine them, and yet (for the more suertie) it is specially commaunded (by 5.Eliz.cap.1.) that they shall certifie the presentments of some offences agaynst that Statute,

And so, if a man (bound to keepe the Peace) do make default of apparaunce at the next Quarter Sessions: the Recognuance it selfe (together with the Record of that default) must be certified into the Chauncerie, Kings Bench, or Exchequer, that execution vpon the Recognuance may be had there. 3.H.7. cap.

cap. 1: and so ought it (as I thinke) if it be presented that the partie hath forfeited his Recognition by breach of the Peace: And likewise, if it be presented before them, that the chattels of a man arraigned of Felonie, be in the hands of an other. For, in these and such other cases, where they cannot of themselves proceed, they ought to send the Records to such as have authoritie to determine upon the: and other wise, they do not discharge that dutie, which the words *Salvis for. & alijs ad nos inde spectantibus* in the Commission do seeme to expect at their hands.

Furthermore, the Statute of Purueiours (2. & 3. Phil. & Mar. cap. 6.) doth appoint the Iustices of the Peace, to certifie to the Treasurer of the Queenes household, the Dockets of Purueiours (brought to their Sessions by Constables) that the serving of such Commissions, and the true answering of purueiours may be the better examined thereby: and although it may be doubted, whether these be Records or no, yet for that they are to be certified from the Sessions of the Peace, I thinke not to allood them this place. And if you will also repute in this number, the Licences (and such other acts of that kind) which passe at the Sessions of the Peace, I wil not be against it.

Touching the *Certification*, it is of force (if it be made according to) to remoue, not onely

Certification

Endrements, or other execution Records, wherein the Iustices of Peace can goe no further, (and wherof I haue spoken already) but also the Records of causes, fully and lawfully heard and determined by them to the end that they may bee reuerfed and aduulled in the Kings Bench, if good matter and cause do so require.

For that prebeminence hath the Kings Bench, as you may see by this: yea, all other the higher Courts, may write to the Iustices of Peace, to certifie their Records that do make for the Triall of causes hanging in them, as you may read 19. Hen. 6. 19. where they of the Common Place did send to the Iustices of Peace for an Endrement, because in a Case of Conspiracie, (brought before them) it was materiall to haue it.

And yet, neither they of the Common Place, nor Kings Bench, doe vse to write for Endrements, or such other Records, vnlesse they be thereunto enduced by cause hanging in their owne Courts before them: For other wise the right way to remooue them, is by Certiorari out of the Chancerie, from whence they may be transferred (by *Admittimus*) to any other Court, 41. lib. Ass. Pl. 22. Knyuet Chiefe Iustice.

Nowe it, a man may gather vpon the booke (1 R. 3. 4) that if any Record be sent vp with out

out warrant to such a higher Court, they may there proceed upon it : because it is thereby made a Record in that Court : and that Court is the Court of the Queene, as well as the other.

Of the generall, (or Quarter) Sessions, of the Peace.

CAP. XIX.

Whaue hitherto laboured, and at the length runne over, sundry things, which (in the opinion of some men) be common to all Sessions of the Peace : And yet, because there be also certain matters (as it seemeth to me) appropriated, some to any, and others to some one, of the generall Sessions : it remaineth that we now distinguish the Sessions of the Peace, and enter into consideration what is a general, and what a speciall Session.

The generall Sessions of the Peace bee those, which are prouided for the generall exercise of the authoritie of the Iustices of Peace, whether you respect the limits of the place, within their Commission, or the bounds of power proceeding from the Commission and Statutes. For at these Sessions (as saith M. Fitzh.) generally all things ought to be giuen in Charge that do lie within the authori-

The generall Sessions.

tie of these Iustices to be determined.

These be moreover called the Quarter Sessions, because they bee holden Quarterly or foure times in the yeere: and the Statute (4.H.7.ca.12.) termed them principall Sessions, for that in them chiefly the power of Iustices of the Peace doth shine and shew it self: in which respect 27.El.ca.19. and some other Statutes do giue them the name of open Sessions also.

But we shall not neede to dwell vpon the names, whercof there can be no great controuerſie, seeing that they all doe aime at one marke: rather (because these generall Sessions be at this day diuersly summoned, begun, and continued, in diuers parts of the Realme) it lieth fitly in my way, to make examination of that diuersitie in this doing.

How many
Sessions.

How many
Sessions.

For (to begin with the Summons) the manner is (in some Shires) to summon peeres by standing Sessions of the Peace: in others 8: in others 12, or 16: and in others otherwise. All which is done, chiefly vpon pretence to ease the inhabitants of the Countie, for whom it would otherwise be very painefull to trauel so often and farre, from all the partes of the Shire to any one place of the same.

And therefore, such as do maintaine 6. or 8. Sessions, doe use to summon all the whole Shire to a couple of them, and to the residue they call onely

onely such partes of the Shire, as they do therfore specially appoint: But yet so, that (vpon the reckoning) each corner of the Countrey giueth attendaunce at foure seuerall Sessions: which also salety out accordingly in those Shires where they haue 12. or 16. Sessions.

For albeit that they do not at any one time summon the whole Shire to any one place (as the others do) yet diuiding their Shire into 3. or 4. partes, and keeping foure seuerall Sessions in each of those partes, they also (as well as the other) doe serue their whole countrey with foure sundry Sittings. And therefore (in mine opinion) although none of these doe follow the precise letter of the law (which requirerh but onely foure quarter Sessions in any Shire) yet euery of them draweth neere to the true meaning of the law, which looketh for nothing else but that the Court of these Sessions should yeerely bee foure times opened for the whole Countie.

But if there be any that do (for this purpose) diuide their Shire into halfes, and doe hold onely foure Sessions in the yeere, that is to say, two in the one part, and two in the other, calling the one halfe of their Hundreds to those two Sessions at the one place, & the other halfe to the other two Sessions holden at the other place: These men (as some haue thought) doe neither retaine the letter, nor attayne

the meaning of the law, in this doing. For, vpon the matter, no part of their Shire hath any moe then two Sessions : which maner, who seeth not how much it may hinder Iustice?

I remember I haue read, that amongst other the desires of those that accompanied Iacke Cade to Blackheath in *Kent*, this was one : that (for sauing of labour) the Quarter Sessions might be holden in two seuerall places of that Shire : And it is very likely, that therupon the same were first kept interchangeably at two sundry townes. But, howsoeuer for the time it was thought good in a sort, to yeeld to that importunitie of the common people : yet can there no good reason be rendred, that the Sessions should be now continued in the maner as they are.

For, if any will seeke to salue it, in saying, that they do call the Constables of the whole Shire to euery of those Sessions : yet they can not so escape : because both reason it selfe, and their owne experience herein, both informe them, that it is likely, they shall haue moe presentments, where moe persons (that can present of their owne knowledge) be assembled, and do take the charge vpon them.

Besides all which, these men do not bring ease, but trauel and delay to their countremen : whom (by this meane) they do compel, either to go farre (out of one part into another) to haue

haue a fault punished, or else to stay for helpe till a Session shall bee kept in that quarter where they inhabite.

Neither may I well omit, that this doing may breed danger to the Iustices themselves, wholesomely of them (hauing taken a Recognizance of a Tipler) doth not certifie it untill the Sessions happen to be in his owne part, and in the meane season, the next Session of the Peace (which in the shire) chaunceth to be holden in the other part: whereof what may follow, the Statute (9. E. 6. ca. 25.) will tell you, and teach them. And like fault is in (though not like forfait) so to retaine a Recognizance taken for the Peace, as you may see by the Statute, 3. H. 7. cap. 1.

Thus much of the summoning (or number) of these Quarter Sessions: Now followeth the time in which they ought to be holden: about the which also all Counties doe not agree: and therefore, it shall be good (before other things) to peruse those Statutes, which doe (either in deede, or thew) concerne this point.

The Statute 25. Edw. 3. cap. 8. ordained thus: Item, that the said Iustices make their Sessions in all the Counties of England, at the least, foure times in the yeere, videlicet.

The times of holding the Quarter Sessions.

St. 1. c. 7.

by the translation of our Lady: and
Saint Margaret: Next comes a Hall

At Saint Michael: and
Saint Nicholas.

The Statute 16. El. 3. R. 2. 1. 1. That the
Commission of the Peace shall make men-

tion that the Statute shall be holden thus: as
the Statute of the Peace shall be holden thus: as

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the Statute of the Peace shall be holden thus: as

The first of these four Statutes; both (in
new, and in common opinion) concerne the
Sessions

The times of
the sessions
holding the
sessions

Sessions of the Iustices of Peace, but it crieth
it belongeth not at all vnto them: for it was
himbe to direct the Iustices of Labourers in the
times of holding their Sessions: and they were
not Commissioners of the Peace, but speciall
Iustices for the causes of Labourers alone, not
resident in the Countrey, but sent downe for the
time of that Seruice, as it may expresse ap-
peare, not onely by the Statute in this the
statute of the said Statute to this purpose by
the Statute 18. Edward 3. cap. 13. 34. Edward 3.
cap. 28. 34. Edward 3. cap. 34. during all
wholly time also, the Wardens of the Peace
were neither called Iustices by any Statute,
nor authorised to deale with Labourers, nor
in 34. Edward 3. cap. 34. they were called
Wardens, and the first name of Iustices of the
Peace by any Statute (that I haue seene)
is founde in 16. Edward 3. cap. 11. 12. before
mentioned, where it is said thus, In the Com-
missions of Iustices of the Peace, and of La-
bourers, expresse mention shal be made, that
they shal hold their Sessions, &c. as before.
And as for the authority ouer Labourers, that
was first appointed to Iustices of the Peace
by the Statute 4. Edward 3. cap. 6. in the
fourth Chapter of which sayd Statute, there
were certain Commissions vnto (of which
I beleue that of the Iustices of Labourers
was one) & vnder taken, that from thence forth
some

some of the Iustices of the one Bench or other, or Iustices of Assise, or Iustices of the Peace with other of the most woorthis of the Countrey, should be named in all Commissions of Enquirie. So that we haue not herein to doe with the Statute 25. Edw. 3. cap. 8. and may therefore proceed to examine the rest that doe follow.

The next is the Statute 36. Ed. 3. ca. 12. But neither that maketh any law for holding the Sessions of the Peace at this day, as well because it was set at large by 12. R. 2. ca. 19. as also (if it were not) because the Commissions of our time, vse no such mention as it commandeth.

Then come we to 2. H. 5. c. 4. which restraineth the libertie of 2. R. 2. c. 19. and reduceth the times of these Sessions to certaintie againe: and yet so, that the one of these Statutes doth not free the other: for the latter is an expolition of the former, so that it is all one as if they both had bene but one Law, and should haue said, That the Iustices of Peace shall hold their Sessions in every quarter of the yeere at the least, namely, in the first weeke after S. Michael, in the first weeke after the Epiphanie, &c.

Now to moue that the Quarter Sessions of the Peace were holden after the prescript of this Statute (2. Hen. 5. ca. 4.) vntill the time of

of the Statute, 5. Eliz. ca. 4. these be my warrants.

First, *M. Marrow* saith plainly that in his dayes the Quarter Sessions were so holden.

Secondly, forasmuch as there can be no higher authoritie of exposition, then to construe one statute by another, I will shew you some statutes also that haue accounted of these Sessions to be holden accordingly.

At the generall Sessions after the feast of S. Michael, the *Custos Rotulorum*, or (in his absence) the eldest of the *Quorum*, ought to appoint two Iustices of the Peace for the oversight and controulment of the Sherifes, & their Clerkes &c. by the Statute, 11. H. 7. cap. 15.

And at the generall Sessions holden at Michaelmas, the Iustices of Peace ought to appoint Searchers for Brasse and Pewter, by the statutes, 19. H. 7. cap. 6. & 4. H. 8. cap. 7. where the word (At) must of necessitie be understood for (After) whether you will take it according to the sayd statute 2. H. 5. c. 4. which saith plainly (After) or according to 36. E. 3. c. 12. which saith Within the *Vtas* of S. Michael, seeing that the *Vtas* (as euery man knoweth) is alwayes after the feast, and not before it.

But (to proue two at once) whereas the Statute 27. H. 8. cap. 5. had taken order for Iustices of the Peace to be made in *Cheshire*, and certaine

certaine other Shires, and had willed that they should be sworne to the keeping of their Sessions of the Peace, &c. as other Iustices of the peace in other the Counties of England were, it fell out, that the Gentlemen and freeholders of the Countie of Cheshire, were much troubled by attending perrely, both at the said quarter Sessions, and also at 8. or 9. Countie Courts which they had besides, and thereupon it was provided (by another Statute, 3 2. H. 8. ca. 43) that the administration of Iustice (before time used in the said Countie Courts) should from thenceforth be done and executed at two times in the yeere only, that is to say, at the Sessions next after the feast of S. Michael, and at the Sessions next after Easter: perrelie for ever. And thus it was provided, that the quarter Sessions in the week next after the Clause of Easter, was tied to the Tuesday of that weeke, by the Statute, 3 3. H. 8. ca. 10. And that it was not without some grante consideration, that the Statute 2 H. 5. ca. 4. did commaunde the Sessions of the Peace to be holden ouer all England, in one and the selfe same weeke: But I thinke it cleare yndough proued, that hitherto these quarter Sessions ought to be directed by that Statute, and therefore I will descend to the Statute, 5 H. 6. ca. 4. and weigh the time in which they ought to be holden at this very day.

The

The wordes of that Statute be these: As much of all the Statutes heretofore made, & euerie braunch of them, as touch or concerne the hyring, keeping, departing, working, wages, or order of Seruantes, Workemen, Artificers, Apprentices, or Labourers, or anie of them, and the penalties and forfeitures concerning the same shall be repealed and ytterly voide and of none effect: And that all the saide Statutes, and elierie braunch thereof, for anie matter contayned in them, and not repealed by this Statute, shall remaine and be in full force and effect, any thing in this Statute to the contrary notwithstanding.

Upon this Statute some haue thought, that the saide Statute, 2. H. 5. cap. 4. is repealed concerning the branch of the Sessions: and others doe thinke the contrarie: and therefore let vs holde the beame, and put in balauce their reasons on either side.

They of the one side do asleadge, that this branch of the Sessions lieth in the midst of that Statute (2. H. 5.) which was made for Labourers, and that it was meant only of Sessions to bee holden for the order of Labourers, and so is within the wordes of repeal.

And they say also, that it will sell our unreasonablie, to hold the Sessions (especially that after Michaelmasse) according to this Statute, because

because the same hapneth very neere to that terme of S. Michaell, whereat the presence of many of these Iustices is no lesse requisite then at the Sessions of the Peace.

They on the other side, do gather vpon the sayd words of 5. El. cap. 4. that some partes of the statutes of Labourers must needs remaine in force, notwithstanding those words of re- peale: for otherwise (say they) the makers of 5. Elizab. mighte (with lesse labour of speech) haue repealed them all at once.

And therefore they say, that two statutes of Labourers, (*viz.* 12. R. 2. ca. 3: and 23. H. 6. cap. 13) be yet in force, for so much of them as doth concerne Victuallers: and likewise, that so much of this statute, 2. H. 5. cap. 4. as doth concerne the resiantie of those Iustices of the Peace which be named of the *Quorum*, and the holding of the Quarter Sessions, is unre- pealed also: for that they concerne not the hi- ring, keeping, &c. or order of Detraunts, &c. (which might be done without the Sessions of the Peace) but the generall seruice of the Commission and Statutes that do authorise the Iustices of Peace, whereof also these Sessi- ons be called the Sessions of the Peace.

And it is not new (in their opinions) to find a generall ordinance in a particular statute: as in the statute 38. H. 8. cap. 39. made speci- ally for the erection of the court of Surueyors, there

there is a generall Law, that all obligations concerning the Kings commodities, shall bee made to himselfe by the wordes *Domino regi, &c.*

Neither was there euer (say they) any Quarter Sessions holden (onely for the causes of Labourers) by the Iustices of Peace, although the petite Sessions of Constables were chiefly bent to that seruice.

And that the sayd statute 2.H.5. did meane the very Sessions of the Peace, and no other, they offer to prooue by the authoritie of those selfe same Statutes, which be alleaged already for the holding of the Quarter Sessions, untill the time of this Act of Queene Elizabeth, for that they haue heretofore so construed and taken the statute.

But to make the prooue full, they adde, that euen this same statute of repeale, 5. Eliz. cap. 4. doth in a certayne place thereof speake of the Quarter Sessions to bee holden after Easter, which cannot be vnderstood of any other of those statutes concerning the Sessions, but onely of 2.H.5. cap. 4. because the rest (that haue certaintie) doe appoint that Session, either at the Annuntiation of the blessed Virgine, or in the second weeke of Lent. And likewise, that the Statutes 8. Eliz. cap. 9. concerning the prices of vessels, of Hope, Ale, and Beere: and 14. Eliz. cap. 5. and 18. Eliz. ca. 3.

com

concerning poore people & vagabonds. haue mention of the Quarter Sessions to be holden next after Easter. which Statutes, as they make not (in this point) any new Law, but be grounded upon former Lawe, supposed to be in force; So allowing of any one of these foure Sessions, they do therein giue allowance of all the other three also.

For answer to the objection, of the necessity of the Michaelmas Sessions, to the Michaelmas Terme, they say that this was fore-
 seene to the makers of that Statute, 2 H. 5. who do therein dispence with the absence of the Iustices of the Benches at Westminster, the Barons of the Eschequer, &c. And yet, to the end, that they also might ouce in the yeere be present at a Session of the Peace (for the better direction of that seruice) the statute 23. H. 8. ca. 10. did specially appoint that the Easter Sessions should be holden yeerely vpon the Twelfth day next after Lowe Sunday, in euery Shire of the Realme.

Now it shall seeme to any man a strange thing, that I make question of the time of holding these Sessions: I let him know first that it is one of the Articles of the Oath ministred to the Iustices of Peace, that they shall hold their Sessions after the forme of Statutes thereof made.

Secondly, that the articles of many Statutes,

tutes, are inquirable (as it may seeme) onely at the Quarter Sessions: because they are not in the Commission at all, and the Statutes themselves do appoint of none other Inquirie touching them, but at the Quarter Sessions alone: and then, if the Iustices of Peace do not hold their Quarter Sessions according to the times appointed by Law, they be no Quarter but Speciall Sessions, and consequently, such Statutes shal either not be enquired of at all, or else enquired of without warrant, both which be very great incomueniences. So that this matter (if it be not rightly conceiued) tendeth both to the hurt of the conscience, and to the hindrance of this seruice. And therefore, it is to be wished, that as the oath of the Iustices of Peace is one ouer all, and the seruice ought each where to be alike: So it might be made knownen, either by declaration of these olde Lawes, or by ordaining of one new; what ought to be vniiformlie done and followed in this behalfe.

Touching the continuance of these quarter Sessions, I haue shortly but this one thing to say: that almost two hundred yeeres agoe, it was ordained by Statute (12.R. 1. cap. 10.) that they should be continued three dayes together (if neede were) vpon paine of punishment: And yet in these dayes of ours, wherein the affaires of the Sessions be excee-

Rr. i.

dingly

How long the
Quarter Sessions
shall continue.

dingly encreased (& consequently, more neede to continue them now, then before) many do scantily affoord them three whole houres, besides that time which is spent in calling of the countrie, and giuing of the charge.

Things referred to the Quarter Sessions.

But it is now more then time that I descend to some of those statutes, which doe specially relie vpon the Quarter Sessions: and therefore I will first begin with such as haue reference indifferently to any of them.

Pope.

The Iustices of Peace may in their open Quarter Sessions, enquire of, heare, and determine, all offences (except treason, and misprision of treason) committed against the Acte made (23. El. ca. 1.) for reteyning the Queens subiects in their due obedience.

Pope.

They may also in their open Quarter Sessions, enquire of such as do extoll the vsurped authoritie of the sea of Rome, against the Statute 5. Eli. ca. 1. And the Clarke of the Peace must reade that Acte at euery of the Quarter Sessions.

Act read.

Seditious words.

And they may in their generall (or Quarter) Sessions, enquire of seditious wordes and rumours vttered against the Queenes Maiestie, 23. Eliz. cap. 2.

Execution of Statutes.

All the Articles, mentioned in the Statute (33. H. 8. cap. 10.) shall be enquired of, and reformed by the Iustices of Peace in their auncient Quarter Sessions. 37. H. 8. cap. 7.

They

They may in their generall Sessions determine of the offences of killing and selling Wainlings vnder two yeeres age, 24. Hen. 8. cap. 9 : 13. Eliz. cap. 25 : & 27. Eliz. cap. 11. and of the offences of not keeping Milch Kine and Calves, 2. & 3. Phil. & Mar. ca. 3 : & 13. Calves. El. cap. 25.

The Enquirie, Hearing, and determination of Forestallings, Ingrossings, and Regratings, may be at the quarter Sessions, 5. E. 6. cap. 14. Forestalling.

The Enquirie, whether Alehouse keepers haue forfeited their Recognisances, ought to be at the Quarter Sessions, 5. E. 6. ca. 25. Alehouse.

The Fine for vnlawful hunting by night, or with painted faces, shall bee set at the next generall Sessions, 1. H. 7. ca. 7. Hunting.

Iustices of the Peace, may in their Quarter Sessions heare and determine offences against the Statute of Armour, 4. & 5. Phil. & Ma. ca. 2. and may there enquire of, heare, and determine the offences of putting to pasture any stoned Horses, &c. vnder the height appointed by the Statute 32. H. 8. cap. 13 : And may there also, enquire of conueying Horses into Scotland, 23. H. 8. c. 16 : 1. E. 6. c. 5 : & 1. El. c. 8. Armour. Horses.

They may at their like Sessions, enquire of, and determine the offences of not amending the highwayes, 2. & 3. Phi. & Mar. cap. 8 : 5. Eliz. cap. 13 : & 18. Elizab. cap. 9. Highwayes.

Keepers of
holdes.

In their quarter and Generall Sessions, they ought to enquire of, heare, and determine the offences of not keeping continuall householdes vpon the Precinctes of the late Monasteries, 27. H. 8. cap. 5 : 5. Elizab. cap. 2: & 14. El. cap. 11: 27. El. ca. 11.

Informers.

And in their quarter Sessions, they may heare & determine the offences of Informers, 18. Eli. cap. 5: & 27. Eli. ca. 10. And at the like Sessions, they may do the like for offenders in Periurie, 5. El. ca. 9: 27. El. ca. 11.

Periurie.

Counterfeit
Tokens or
Letters.

Such as be suspected of vsing counterfeit Tokens or Letters, may be called by procelle to the next generall Sessions, and must be consulted there, 33. H. 8. cap. 1.

Wood.

Iustices of the Peace may in their open Quarter Sessions, call before them the owner of a Wood, and twelue of the Commoners there, for setting out the fourth part thereof, 35. H. 8. cap. 17: & 13. Eli. cap. 25.

Maister and
Seruant.

The prooffe of the sufficiency or insufficiency of the cause, for which the maister may put away his Seruant, or the Seruant may depart from his maister before the end of the terme, shall be made at the Quarter Sessions, 5. Eli. cap. 4.

Badgers.

The licences for Badgers, Drouters, &c. are to be granted in the open Quarter Sessions, 5. Eliz. cap. 12. and the prohibition of transporting corne, is to be made by the more part

Transport
Corne.

part of the Iustices of Peace at their Quarter Sessions, 13. Eliz. cap. 13.

The licences that the poore of surcharged Poore. Cities or Townes, may beg, are to be giuen at the generall Sessions: and he that is grieued with any taxation made vpon him for the poore, may be eased there: and the taxation for Prisoners, the reliefe of the prisoners in Gaoles, ought to be made there also, 14. Eliz. cap. 5.

The assignment of such as shall keepe any Tauerne. Tauerne to utter Wine, ought by the statute (7. Edw. 6. cap. 5.) to be made at the generall Sessions.

A Beggars child may at the generall Sessions, be bound to serue any subiect of this Realme, being of honest calling, 14. Eliz. ca. 5: & 18. El. cap. 3. Beggars childe.

The Dockets of Purueyors ought to be deliuered ouer to the Iustices of Peace at the next generall Sessions, 2. & 3. Phil. & Mar. cap. 6. Purueyors.

The Act of rebellious assemblies (or the effect thereof) ought to be openly read at euery Quarter Sessions, 1. Mar. Parl. 1. cap. 12: & 1. Eli. cap. 17. Act read.

The Iustices of Peace haue power (in their open Sessions) to enquire, heare, and determine the defaults of Vnder-shirifes, clarkes of Shirifes or Vnder-shirifes, and of Baylifes, &c. in not taking the Oaths appointed by the sta-

tute. 27. El. ca. 12.

Proclamation
on read.

And enquire of others, whether the Proclamation (set forth 4. H. 7. ca. 12.) be not yet to be read at every Quarter Session also: for some doe thinke, that it was to endure for the time of that King onely.

The reason
why some
things be re-
peated.

These and some others (which peradventure I omit) haue reference (as you see) to any of the same generall Sessions: for so many of the which, as be inquirable (and ought therefore to be giuen in charge) I may seeme, eyther to haue committed a Tautologic in reporting them twice, or (which is worse) to haue written a Repugnancie, in that I did first deliuer them as common to all Sessions of the Peace, and doe nowe here restraints them as proper to the generall. But this is shortly the cause of my so doing.

Some men be of the opinion, that these statutes which be inquirable (by expresse words) at the Quarter Sessions onely, may neuertheless be enquired of at the speciall Sessions also. And I haue hitherto doubted, whether that be true in all cases. or no: for as the Iustices of Peace haue none other warrant to enquire of these matters, but onely by those Statutes which doe appoint the enquiry to be made at the Quarter Sessions: So (as me thinketh) they ought to pursue that warrant, if they will take vpon them to enquire, and haue any care that

that their doings be warranted. And I thinke it be no great doubt, but that as the Statutes doe many times giue degrees of power, sometimes in greater measure, and sometimes in lesse: So also, the same Statutes may re-
straine the authoritie of Enquirie to some cer-
taine Sessions, & specially to the quarter Ses-
sions, in respect, that they bee both more open,
more commonly knowen before hande, and
better furnished with Iustices, and consequent-
ly, the meeter for administration of Iustice,
specially in affaires of the waighcier sort. And
therefore, I haue in this part laboured, both to
satisfie their opinion in the one, and to serue
mine owne phantasie in the other.

But nowe also, let vs looke out some such Easter Sessi-
ons.
things, as bee left onely to the Easter or Mi-
chaelmasse Sessions.

The pices of vessels, for Sope, Ale, and Prices of
Vessels.
Beere, shal be set and proclaimed by the Iusti-
ces of Peace, at their Quarter Sessions after
Easter. 8. El. ca. 9.

The wages of Seruants and Labourers, Wages of
Seruants.
are to bee rated by the Iustices of Peace at
their Easter Sessions, or within sixe weekes
after Easter. 5. Elizab. ca. 4.

And they must peereley in the same Sessi- Poore.
ons examine the perfourmance, or not per-
foumance of the statute made for the poore,
14. El. ca. 5.

R. iiii.

They

Worke and
Correction
for idle per-
sons.

They must also in the same generall Sessions yearely, take order for the prouision of stockes and store, for the setting of youth, and idle persons on worke: and ought then also to appoint houses of correction for such as will not worke, 18.El.ca.3.

Michaelmasse
Sessions.

At the Quarter Sessions to be holden after Michaelmasse, the Iustices of Peace are to appoint Searchers for Blasse and Pewter, 19.H.7.cap.6: & 4.H.8.cap.7.

Blasse and
Pewter.

Shirifes
bookes.

And at the generall Sessions after Michaelmasse, two Iustices of the Peace ought to be appointed by the *Custos Rotulorum*, or (in his absence) by the eldest of the *Quorum*, for the ouerlight & controlment of the Shirifes bookes, &c. 11.H.7.ca.15.

Particular
Statutes.

In the number of particular Statutes, concerning the Quarter Sessions, these may haue place:

Norfolke.

33.H.6.ca.7. For Attorneis in *Norfolke*.

Sewerne.

26.H.8.ca.5. For passage ouer *Sewerne*.

Cheshire.

32.H.8.ca.43. For Sessions in *Cheshire*.

Halifaxe.

2.& 3.Ph.& Mar.Of Wools in *Halifaxe*.

Algate.

23.El.ca.12. For pauing without *Algate*.

27.El.ca.24. For the Sea bankes in *Norfolke*.

25.Eliz. cap. 19. For the highwayes in *Kent*, &c.

Of the Speciall Sessions of the Peace.

CAP. XX.

The speciall Sessions of the Peace, doe varie from the generall, in this chiefly, that they be holden at other times, when it shal please the Iustices themselves, or any two of them (the one being of the *Quorum*) to appoint them. And this power they haue, not onely by the Commission, where it saith, *Ad certos dies, & loca, quos vos, seu aliqui vestrum, ad hoc prouideritis, &c.* but also by the Statute 2. Henr. 5. cap. 4. which alloweth them to do it More often (thē the foure times) if neede do so require.

They be also (for the most part) summoned for some speciall businesse, and not directed to the generall seruice of the Commission: And yet, there is no doubt, but that all the Articles within the Commission of the Peace, are both inquirable and determinable at any speciall Session of the Peace.

M. Fitch. (as I haue already noted) vseth a third difference betweene the generall & speciall Sessions of the Peace: affirming, that whereas at the generall Sessions, the Iustices of Peace ought of dutie to giue in charge, all matters (within the Commission, or Statutes) that are to be determined before them: yet neuertheless

What things be inquirable, at the speciall Sessions of the Peace.

uerthelesse at the speciall Sessions they are at libertie to giue in charge eether all, or anie of them, as it shall seeme good vnto themselues.

I will not gauesay, but that the Iustices of Peace, may at any speciall Session of the Peace, giue in charge all such Statutes as doe giue vnto them a generall power of enquire (without vsing mention of any Session) as doeth the Statute 25. Henr. 8. cap. 13. of Sheepe: yea, I will grant, that they may also at their special Sessions of the Peace, giue in charge to enquire vpon all such other Statutes, as do vse the worde Sessions indifferently, without adding Generall, or Speciall: of which sort there be a great many, as 5. Edw. 6. cap. 4. of fighting in Church, or Churchyard: 14. Hen. 8. cap. 11: & 19. H. 7. cap. 11. of hunting: 5. Elizab. cap. 13. of linnen clothe: 2. & 3. Phil. & Mar. ca. 7. of Fautes and Parquets: 5. H. 4. cap. 3. of Seawatch: and 7. E. 6. cap. 5. of Mines: and sundry others. But, whether they may there also enquire of such other Statutes, as do only assigne the enquire to be made at the Quarter Sessions, you haue heard my minde, and read my reasons in the Chapter last before.

The vse of the
speciall Sessions.

Howsoeuer it be, there might be great vse of the speciall Sessions of the Peace, if they were now and then holden (betweene the Quarter Sessions) to deliuer the gaoles of vnruly

ruly seruantes, sturdy vagabondes, idle poore folkes, petite thecues, and some others. For it is dayly prooued, that many (being sent thither for correction) doe sucke nothing but corruption there : so as they be worse when they come forth, then they were when they were first committed, which euill happeneth, by long abode there in wicked company : whereas, if they had more speedie triall, both they shoulde bee amended, and the Countrie lesse charged by it.

Foraine Realmes and Countries doe reape the fruite of speedie Iustice : and if our Gaoles in *Englande* were more often swept and emptied, I doubt not, but that wee also should finde a sensible profite to arise thereby : peraduenture some man wil say, that by this meane wee shall drawe vpon vs againe, the same incommenience of troubling the Countrie that happened by the sixe weekes Sessions, which were therefore abrogated by the Statute, 37.H.8.ca.7. But that is not to bee feared : for whereas those Sessions were to be holden in euery limite of the Shire, these may be kept only in the Towne where the Gaole standeth : the which, (since it is commonly populous, shall be easily able to furnish this seruice, without calling any other remote part of the countrie to it.

The

The Forme of the Precept for Summons
of a Speciall Session, may be thus.

A. B. C. D. E. F. & G. H. Iusticiarij (inter
alios) dom. Reg. nunc ad pacē in comitatu
Kancia conservandam assignati, necnon ad di-
versas felonias, &c. vicecomitis comitatus præ-
dicti salutem: Ex parte dict. domine Regine tibi
precipimus firmiter iniungentes, quod non omi-
tas propter aliquam libertatem infra Hundredum
de O. P. & Q. aut eorum aliquod, in comitatu
predicto, quin venire facias coram nobis apud R.
infra Hundredum de O. predict. decimo die
Aug: proximo futuro. 24. probos & legales ho-
mines de eisdem Hundredis, ad inquirendum
tunc tibi, pro dicta domina Regina, tam super
quibusdam articulis in statuto in parliamēto di-
ctæ domine Regine nunc anno regni sui quinto
tent. edit. artifices, laboratores, servientes, & ap-
prenticios concernentibus, quam super articulis
quibusdam in statuto in parlamento dictæ domi-
ne Regine anno regni sui decimo quarto tent. e-
dit. rognos, vagabundos, validos mendicantes &
alios pauperes tangentibus. Proclamari etiam
facias in idoneis locis per Hundreda predicta,
quod omnes qui versus predictos artifices, labo-
ratores, servientes, apprenticios, rognos, vaga-
bundos, validos mendicantes, & alios pauperes,
seu eorum aliquos conqueri voluerint, sint tunc
ibidem

*ibidem coram nobis ad prosequendum versus eos parati. Et tu sis ibi tunc, vel vicecomes tuus, habens nomina Iuratorum predictorum, & hoc nostrum Breue. Testibus nobis prefatis A. B. C. D. E. F. & G. H. apud I. in comitatu predict. ultimo die Iulij, Anno regni dicta domina nostra Elizabetha Dei gratia Anglia &c. Regi-
nz, &c. vicefimo nono.*

Of the Rewards and Punish-

ments, due to *Iustices of the Peace,*
in respect of their *Sessions.*

CAP. XXI.

WELL and well doing, do from the first to the last, deserve reward & punishment: and therefore, as wee closed by the first part of this Treatise with them: So also shall this last booke re-
ceive the same ende and conclusion.

Whiles it was at the libertie of the Iustices of Peace to hold their Quarter Sessions as long time as they would, the Law did not allow them any wages for their paines. But when the Statute (12. Rich. 2. cap. 10.) had bound them (under paine of punishment) to continue their Sessions three dayes together (if the affaires of their office did so require) then the same statute thought it meete also, to allow to every of them foure shillings by the day,

The Wages of
the Iustice of
the Peace at
the Quarter
Sessions.

day, for the time of their Session, to be payde by the hands of the Shirife, out of the Fines and Amerciaments rising of the same Sessions: And that the Lordes of Franchises, should be contributoryes to those Wages, after the proportion of their partes of the saide Fines and Amerciaments.

But, because it was very Dilatorie for the Iustices of Peace, to take those Wages, at the handes of the Shirife (as I haue alreadye touched) vpon the Eftreate sent out of the Eschequer: and for that also it grew in question, whether such Lordes, as were named in the Commissions of the Peace, shoulde be partakers of the same Wages: the Statute (14. Ric. 2. cap. 11.) did plainly prouide, that the Wages of these Iustices should be leuied and payed by the Shirife vpon Eftreats doubled and indented betweene the Shirife and them: And that no Duke, Earle, Baron, or Baronet (albeit they were Iustices of the Peace, and did hold their Sessions with other eight Iustices) should take any Wages for their Office in this behalfe.

And hereof also M. Mar. collecteth, that howsoeuer many Commissioners of the Peace there shalbe assembled at these Sessions, yet only eight of them shall receiue the wages: because (sayth he) that at such time as these wages were first appoynted, the lawe did take knowledge

knowledge & make allowance onely of eight Iustices and no more. And hee also maketh it doubtfull, whether it lie not in the power of the Barons of the Eschequer, to appoint which eight (when moe be assembled at the Sessions) shall haue the wages payde vnto them.

For the first point, it woulde bee somewhat hard (indeede) to straine that Statute so far, as to giue wages thereby to so many Iustices as bee now at these dayes in euery Shire, and woulde be present at the Sessions. Yet the Statute of Labourers, 5. Eli. ca. 4. that willet the Iustices of Peace in euery Shire to diuide themselves, and to keepe two special sittings peereley for the execution of that Lawe, alloweth to as many of them as shall giue their attendance five shillings a day for three dayes together. But concerning the latter, it seemeth by the latter Statute it selfe, that the Shireffe shall first pay the wages, and then the Barons shall make the allowance, according to the Indenture: So that I see no libertie of such nomination left vnto the Barons.

I confesse, that it might breede both offence against the Shireffe, and seaulousie among the Iustices themselves, to haue one of them preferred before an other in this payment: and therfore I thinke it wisely done (as it is somewhere used) to bestowe the whole allowance vpon the defraying of their common diet.

If the Fines and Amercements of the same Sessions (saith M. Marrow) will not fully amount to the summe of the wages then due to the Iustices, yet shall the wages bee ratably paid out of them, so farre as they will extend.

Furthermore, those two Iustices of the Peace, that do in their Sessions call before the, any person suspected to offend the Statute of Deerhayes, Buckstals, and Skalking, and doe examine him thereupon, and find him faultie therein, shall haue the tenth part of the forfeiture growing thereby. 19.H. 7. cap. 11.

Buckstals.

Punishment
at the com-
mon law.

Hierbert of Reward, henceforth of punishment. It seemeth, by the opinion of some Iustices (2.R. 3. 10.) that if a Iustice of the Peace do any thing of Record ignorantly, and for want of knowledge, that he shall not be punished for it. And this opinion of theirs is not new in this Realme, although it be otherwise truly sayd, *Imperitia quoque culpa adnumeratur*: for you may read in the old lawes, of King Edgar (cap. 3.) and of King Canute (ca. 14.) that if a Iudge had erred in his office, he might then haue excused himselfe by oath. That he did it not of euill made, and that hee knew not how to do better: which I speake not, to comfort men in carelesse ignorance, but to shew you that men may erre, and that erring by infirmitie they are not altogether unworthy of pardon: and withall to let the Iustices
of

of Peace see, that it may bee a fault to erre by ignorance, and that therefore they ought to stay, (where they meete with *non liquet*) as their owne Commission doth direct them.

Now, on the other side, if a Iustice of the Peace will craftily embesill an Enditement, or wilfully raze any part thereof, or maliciously enroll (or file) that for an Enditement which was neuer found by the Iurie, Then (by the resolution of all the Iustices assembled before the King in the Starre Chamber, 2. R. 3.) a Commission may goe out to enquire (by the othes of 12. men) of such his misdemeanour, and if hee bee convicted thereof, he deserteth to loose his Office, and to make fine to the Queene according to the quantity of his misprision and offence, *ibid. Fo. 10.* And euen so may he be punished (as this Booke leadeth me to thinke) if hee alter an Enditement of Trespasse, into an Enditement of Felonie, howsoever the opinion (27. lib. Ass. Pl. 18.) be found against it.

A Iustice of the Peace may also be endited, of the unlawfull taking of money for doing his office, or of such other falsitie, *Fitz. Nat. Br. 243.* And if he cause a man to bee endited at the Sessions, by former conspiracie, or indirect practise, hee is punishable for it, as a private man. 21. E. 4. 67.

But if (in the handling of a cause at the open
S. i. Sessions)

Sessions) it happen him to speake against an offender, somewhat excessiue, yet he shal not be punished for it: *Iuris enim executio, non habet iniuriam*: Neuerthelesse, Judges ought not to abuse their tongues by intemperance, but they must rather take great heed (as Cicero, pro Font. sayd) *Quibus verbis utantur, ne quid minus moderate positum, ne quid ab aliqua cupiditate prolapsum verbum esse videatur.*

Punishments
by Statutes.

Thus farre of punishments by the common Law, now to those by Statutes.

Alehouse.
Five Markes.

If the Iustices of Peace, hauing taken a Recognisance for an Alehouse, do not certifie it at the next quarter Sessions of the Peace, they shal loose five markes, 5.E.6.ca.25.

High wayes.
Five pounds.

That next Iustice of the Peace which doth not certifie at the next generall Sessions of the Peace, such presentments as the ouerseers of the Highwayes haue before presented vnto him, shal loose five pound for euery default, 2. & 3.Phil.& Mar.ca.8: & 5.El.ca.13.

Seruaunts
Wages.
Ten pounds.

If any Iustice of the Peace (not being sick, nor hauing other lawfull excuse, to be testified vnder the Oath of one asselled in the Subsidie booke at five pound, &c.) do not assemble at the Easter Sessions, to rate the wages of seruaunts, &c. he shal loose ten pound to the Queene. 5. El.ca.4. And if any Iustice of the Peace (so assembled) shal depart thence, before conference
had

Poore on
worke.
Five pounds.

had about the execution of this Acte for setting idle persons on worke, hee shall forfaitie five pound. 18. El. cap. 3.

The Iustice of the Peace which sayleth to record (at the next quarter Sessions) the name of any person (aucthorised to shoote in a Gun) that hath presented his name unto him, shall lose xx. shillings. 2. E. 6. ca. 14. If that Statute doe so farre extend, whereof the words giue cause of doubt.

Gannes.
Twentie
shillings.

And if the Proclamation (annexed to the Statute 4. H. 7.) ought now to be read, then if it be not read at each quarter Sessions, every Iustice of the Peace there present, shall loose twentie shillings. 4. H. 7. cap. 12.

Proclamation
read.
Twentie
shillings.

If the Iustices of the Peace, before whome any presentment shall bee made, at their quarter Sessions, against any person for extolling the authoritie of the See of Rome, doe not certifie the same into the Kinges Benche within 40. dayes after, if the Tearme be then open, and if not, then at the first day of the next full Tearme, they shall every of them loose C. pound for every default. 5. El. cap. 1.

Pope.

An hundred
pound.

And those Iustices of the Peace, which doe not certifie into the Escheaquer, their examinations taken concerning the entering of plaintes by the Shirifes, shall loose xl. shillings. 1. H. 7. cap. 15.

Examinatiōs.
Fortie shil-
lings.

THE EPILOGVE.

The Epilogue. **T**Hus haue I (by the fauour of God) brought this Treatise to an end: wherein if many things haue escaped me vnseene, I doe not greatly maruayle, when I looke backe and behold the varietie and multitude of the matter that I haue passed through: and it shall not bee hard for him that meeteth with such Estrayes, to take and lodge them in their right *Titles* here.

Againe, if I shall be thought to haue heaped vp too many conceites (borowed out of *M. Marrowes* reading) I make answere, that I haue omitted many, and haue made the best choyce that I could.

If furthermore, I shall seeme to those that be masters in *Arte* and *Method*, not to haue thoroughly obserued their rules, and specially that *usd* *in* because I doe many times mingle *aliens*, things not precisely pertaining to my matter in hand: To them I say, that it is the receiued maner of teaching in our law, *To shew things by their cōtraries and differents*: and seeing that great light commeth to the matter thereby, I may neyther altogether condemne it as vnapt, nor reiect it as vnseruiceable.

Morcouer, if I haue bene deceiued in laying downe ouerboldly mine owne opinion,
I will

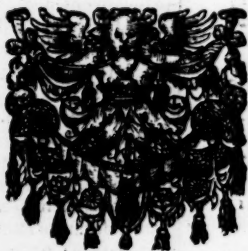
The Epilogne.

I will no lesse gladly be admonished of it, the
readily reforme my mistakings.

Finally, whatsoeuer other thing is done
amisse, I protest that it hath escaped of vn-
skill, and not proceeded of wilfulnesse: and
therefore, I desire that I may be allowed the

benefite of that *Pardon*, which (as I
tolde you euen now) is in like
case grauntable to a
Iustice of the
Peace.

FINIS.



A Table conteining (verie neare)
all the imprinted Statutes, both
generall and particular, wherwith
Iustices of the Peace haue in any
for 20 deale.

<i>King.</i>	<i>Yeare.</i>	<i>Chap.</i>	<i>Content.</i>
He, the 3.	9	25	Of measures and weighis.
			Thassise of Bread and Ale.
			The iudgemēt of the pillory.
			The ordinaunce for measu- ring, Of weights and measures.
Ed, the 1.	3	9	Of fresh suite after felons.
		10	Of Coroners.
		15	Of Bailement of Felons.
		25	Against maintenance.
		26	That Shirifes and other Mini- sters shall take no rewards.
		27	Of fees for deliuering chapiters.
	13	28	Of maintenance of quarels.
		34	Of rauishing women.
		47	Of taking Salmons.
		49	Against maintenance.
	28		The Statute of <i>Winchester</i> .
	34	11	Against maintenance.
Ed, the 2.	1		For breaking Prisons.
	18		For Puruciours.
			For Estreats of the Exchequer.
Ed, the 3.	1	14	For maintenance of quarels.
		16	For keeping of the Peace.

Endite-

<i>King.</i>	<i>Yeere.</i>	<i>Chap.</i>	<i>Content.</i>
		17	Enditelements before Shirites to be taken by Indenture.
	2	3	For comming before the Kings Iustices with force and armes.
		6	A confirmatiō of the St of <i>Wint.</i>
	4	2	Of Wardens of the Peace.
		4	That Purueyours pay in hande, and haue a warrant vnder the great or small Seale.
		10	Agaynst Shirifes & Gailers that will not receyue thecues, and such other into their Gailles.
	5	2	Against the Kings Purueiours.
		10	Iurours that take money shall no more passe vpon Iuries.
		11	That Iustices assigned to determine felonies haue power to write to forreine Countries.
		14	Against Robertsmen, and drawlatches.
	14	10	Gaoles of the Counties to bee annexed to the Shirifes.
18.St.2.		2	Iustices of Peace made.
20		4.&5	For mainteyning of quarels.
23		6	For Vitailers.
25		1	For Purueyours.
25.St.4.		3	For forestalling of Wines.
25.St.5		9	Auncell weight taken away.
		10	For weight and measuring.
		15	For takers of Sheepe.
27.St.1.		4	None going to the Staple, be disturbed by the Kings takers.
		10	For waights of the Staple.
28		11	For safegard of Marchants aliens cōming within this Realme.
34		1	For Iustices of Peace.
		2	For Purueyours.

Iustices

King.	Yeare.	Chap.	Content.
		5. & 6	Iustices of Peace to enquire of measures.
		22	For Hawes found.
	36	2. 3. 4. 5. 6.	Against Purueyours.
		12.	For the Sessions of the Peace.
	37	19	For finding of Hawkes.
	42	9	For leuying of the greene waxe.
Ric. the 2.	1	3	All Statutes of Purueyours confirmed.
		4	For maintenance of quarels.
		7	For giuing of Liueries.
	2	2	For forestalling of Wines.
	5	7	For entring into lands.
	7	8	For Purueyours.
		13	For ryding in Harnesse.
	12	3	A confirmation of all Statutes for Vitaylers.
		6	For bearing weapons.
		10	Iustices of Peace to punish Vagabounds, and for holding their Sessions.
	13	4	Clarke of the Market.
		7	Iustices of Peace be made a new.
		8	For price of vitaille.
		9	For weights.
		13	For Hunters.
		19	For safegard of Fish.
	14	11	For assigning of Iust. of Peace.
	15	2	For forcible entries.
		4	For measuring Corne.
	16	3	The Clarke of the Market to haue readie his weightes according to the Standard.
		4	For liueries of companies.
	17	8	For Riots & vnlawfull assemblies.
		9	That iustices of the Peace shall be

King.	Yeere.	Chap.	Content.
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			be conseruatours of the Statutes made for Rivers.
		10	Two men of Lawe to bee assigned in the Commission of the Peace to deliuer Gaoles.
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Lambard, digested and contrived vnder apt

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Presentments, and Processes.*

The Stile of the Sessions.

Kanc.



*Eneralis Sessio pacis, tenta a-
pud Maidstone in comitatu
prædicto, primo die Octobris,
Anno Regni serenissimæ do-
minæ nostræ Elizabethæ, dei
gratia, Angliæ, Franciæ, &
Hyberniæ Regina fidei defensoris, &c. tricesi-
mo, Coram Henrico Cobham milite, & socijs
suis Custodibus pacis dictæ dominæ Regina, ac
Iusticiarijs suis ad diversa felonias, transgressi-
ones, & alia malefacta in dicto comitatu perpe-
trata audiendum & terminandum assignatis.*

Enditements concerning Ecclesiasticall causes.

For extolling the authoritie of the Pope.



*Utratores presentant pro dominæ Regina,
quod I. S. de C. in comitatu prædicto
Clericus, xx. die mensis Aprilis, anno reg-
ni serenissimæ dominæ nostræ Elizabethæ,
dei gratia Angliæ, Franciæ, & Hyber-
niæ Regina, fidei defensoris &c. tricesimo, apud D.
in comitatu prædicto, scienter, consideratè, malitiosè,
&*

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& directe palam in presentia multorum dictæ dominæ Reginæ nostræ nunc subditorum, affirmavit, & defendit auctoritatem Papæ Romani ecclesiasticam in hoc regno Angliæ preantea usurpatam, hijs expressis verbis anglicanis sequentibus, viz. **I swear by the blessed Masse, and will auow that our holy father the Pope of Rome, is the supreme head of the Church of England,** in magnâ derogationem Regiæ auctoritatis, & prerogatiuæ dictæ dominæ Reginæ nostræ, ac contra coronam & dignitatem suam, necnon contra formam diuersorum statutorum in huiusmodi casu editorum & prouisorum. Et quod A. B. de D. prædicta in comitatu prædicto **Waxchande=** 102, sciens ipsum I. S. dicta verba loquutum esse, ac dictam dicti Papæ auctoritatem modo & forma vt prefertur, defendisse ipsum I. S. apud D. prædictum, postea scilicet, xxii. die dicti mensis Aprilis anno supradicto, consolatus est & confortauit, ex industria & ex præposito, & ad eam intentionem vt idem A. B. promoueret & efferret prefatâ dicti Papæ auctoritatem usurpatam, in perniciosissimum aliorum exemplum, ac contra coronam, & dignitatem dictæ dominæ Reginæ nostræ nunc, ac etiam contra formam diuersorum statutorum in eiusmodi casu prouisorum & editorum.

*For absolving from the Queenes
obedience.*

INquiratur pro domina Regina, si A. B. de C. in dicto comitatu clericus, sexto die mensis Maij, Anno regni dominæ nostræ Elizabethæ dei gratia Angliæ, Franciæ & Hybernæ reginæ fidei defensoris &c. Tricesimo, apud C. prædictam in comitatu prædicto, voluntariè & proditoriè conatus est, & præstauit absolvere, persuadere, & seducere quandam Ioannem W. de C. prædicta in comitatu prædicto viduam, à naturali obedientia & subiectione sua, quam eadem Io-

V u. iij.

anna

Precedents.

anna erga dictam dominam nostram reginam gerere debet, ad obediendum pretenſæ authoritati Sedis Romanæ, tunc & ibidem proditoriè præ ſe ferens & aſſerens ſe habere poteſtatem & facultatem id faciendi, & tunc & ibidem proditoriè dicens eidem Ioannæ hijs anglicis verbis ſequentibus, *mother Ioaane, you wil haue a blacke ſoule (I tell you) if you doe not the ſooner forſake the Queene* (innuendo prædictam dominam noſtram reginam nunc) *and her hereſies, and peelde your ſelfe to the obedience of our mother Church the holy See of Rome:* contra pacem dictæ dominæ noſtræ Reginæ, coronam & regalem dignitatem ſuam, & contra formam ſtatuti in parlamento dictæ dominæ noſtræ Reginæ tento apud Weſtmonaſterium in comitatu Middleſexiæ, anno dicti regni ſui viceſimo tertio in huiusmodi caſu prouiſi & editi.

For a Ieſuite, and his Receiuer.

INquiratur pro domina Regina. Si E. C. nuper de S. in comitatu prædicto clericus, natus apud S prædictam in comitatu prædicto, atque infra annum iam proximè præteritum factus & profeſſus Ieſuita per authoritatē à ſede Romana deriuatam, proditoriè apud S. prædict. in comitatu prædicto, ſexto diē Iulij, anno regni dictæ dom. noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ & Hybernæ Reginæ, fidei deſenſoris, &c. Triceſimo, à partibus tranſmarinis applicuit, & dicto ſexto die anno ſupradicto, & nonnullis alijs diebus tunc proximè ſequentibus apud S. prædictam in comitatu prædicto, proditoriè moram fecit ac remanſit: contra formam cuiuſdam ſtatuti in parlamento dictæ dom. Reginæ noſtræ nunc tento apud Weſtmonaſterium in comitatu Middleſexiæ, anno regni ſui viceſimo ſeptimo, in huiusmodi caſu prouiſi & editi, ac contra pacem dictæ dom. Reginæ, coronam, & dignitatem

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tatem suas. Et si W.B. de S. prædict. in dicto com. mercator, scienter, voluntariè, & felonice, postea scilicet, dicto sexto die dicti mensis Iulij anno supradicto, prædictum E.C. apud S. prædictam in comitatu prædicto recepit & confortauit, dicto W.B. ad tunc & ibidem ad largû, & extra prisonam existentem, ac præfatum E.C. huiusmodi Iesuitam esse, tunc & ibidem sciente & cognoscente: Contra formam Statuti prædicti, ac contra pacem, coronam & dignitatem dictæ dom. Reg. nostræ.

For saying and hearing of Masse.

Ivratores præsentant pro dom. Regina, quod Ioh R. nuper de C. in comitatu prædicto clericus 8. die Aprilis, Anno regni dictæ dom. nostræ Elizabethæ Dei gratia, Angliæ, Franciæ & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, apud C. prædictam in comitatu prædicto, voluntariè dixit, & celebrauit vnam missam, contra formam cuiusdam Statuti in parlamento dictæ dominæ nostræ Reginæ tento apud Westmonasterium in comitatu Middlesexie, Anno regni sui vicesimo tertio in hoc casu prouisi & editi, & contra pacem dictæ dom. Reginæ, coronam, & dignitatem suam: Et quod Maria B. de C. prædicta in com. prædicto vidua, dicto 8. die Aprilis anno supradicto apud C. prædictam in comitatu prædicto, interfuit præsens tempore dictæ celebrationis missæ prædictæ, ac eandem missam (sic vt præfertur dictam) ad tunc & ibidem voluntariè audiuit, contra formam Statuti prædicti, ac contra pacem, coronam & dignitatem dictæ dom. Reg. nostræ.

For being absent from the Church.

Ivratores præsentant pro domina Regina, quod A. D. de W. in comitatu prædicto (vxor G. D. de W. V u. iiii. præ-

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prædicta in dicto comitatu generosi) ætatis 16. annorum & amplius existens, ac apud W. prædictam in dicto comitatu, à primo die Augusti, Anno regni dictæ dom. nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ fidei defensoris, &c. Tricesimo, vsque ad tertium diem Octobris, Anno prædicto, assidue commorans & inhabitans, ad ecclesiam parochialem de W. prædicta, aut ad aliquam aliam ecclesiam, capellam, aut vsualem locum communium precationum, per totum tempus prædictum non accessit, venit nec resortauit, sed penitus per totum tempus prædictum se abinde absentauit, cum tamen interim non habuerit vllam legitimam aut rationabilem dictæ absentitiæ suæ excusationem: In magnû dei & dictæ dom. Reg. contemptum, nec non contra formam diuersorum statutorum in huiusmodi casu prouisorum & editorum.

*Against a Schoolemaster not licenced,
nor resorting to the Church, and against
his maintainer.*

Iuratores præsentant pro domina Regina, Quòd K. M. de I. in dicto comitatu Scholæ magister, à secundo die Septembris, Anno regni dictæ dom. nostræ Elizabethæ, Dei gratia, Angliæ, Franciæ, & Hybernæ Reginæ fidei defensoris, &c. Tricesimo, vsque nunc in domo mansionali, cuiusdam E. A. de I. prædicta in comitatu prædicto Viduæ, ausus est, & præsumpsit erudire, & docere pueros dictæ E. A. ibidem, cum idem K. M. durante dicto tempore non accessit nec resortauit ad ecclesiam parochialem de I. prædicta in comitatu prædicto, nec ad vllam aliam capellam, aut vsualem locum communium precationum, sed se penitus per totum tempus prædictum abinde absentauit, nullam habens legitimam aut rationabilem dictæ suæ absentitiæ excusationem, & cum idem K. M. non est per
Episcopum

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Episcopum diocesis loci illius in quo scita est prædicta ecclesia parochialis de I. prædicta, aut per eius loci ordinarium, licentiatum, aut allocatus ad erudendum & docendum: In magnum dictæ Dom. nostræ Reg. contemptum, ac contra formam statuti in parlamento dictæ dom. Reg. (tento apud Westm. in comitatu Middlesex, Anno regni sui vicesimo tertio) in huiusmodi casu propositi & editi. Et quod prædicta E. A. voluntarie in domo sua prædicta per totum tempus prædictum custodiuit & manutenit præfarum K. M. modo & forma erudientem & docentem, sciens ipsum K. M. modo & forma prædictis se absentasse, In contemptum dictæ dom. Reg. ac contra formam Statuti prædicti.

For Perjury in a deposition.

I Vratores præsentant pro domina Regina, Quod F. E. de G. in comitatu prædicto **Cailor**, 24 die Iunij, Anno Regni dom. nostræ Elizabethæ Dei gratia Angliæ, Franciæ & Hybernæ Reginæ fidei defensoris, &c. Tricesimo, apud M. in comitatu prædicto coram A. B. C. D. & E. F. Armigeris, Commissionarijs (virtute Breuijs dictæ dom. Reginæ de Commissione, prædictis A. B. C. D. & E. F. directi, ac extra curiam Wardorum & liberationum dictæ dominæ Reginæ apud Westminster in comitatu Middlesexiæ, præantea emanentis) pro examinatione quorumcunque testium, tam ex parte cuiusdam I. L. de M. prædicta in comitatu prædicto **Weauer** querentis, quam ex parte H. M. de N. in dicto comitatu **Yeoman** defendentis, in quadam causa (siue materia) inter ipsos I. L. & H. M. tunc in dicta curia Wardorum & liberationum controuersa, & ibidem dependente in variancia pro titulo vnus messuagij cum pertinentijs in M. prædicta in dicto comitatu, personaliter constitutus, Ac tunc & ibidem existens testis productus per prædictum I. L. ad

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ad testificandum & deponendum in causa prædicta ex parte ipsius I.L. & iuratus per Commissionarios prædictos, ad veritatem dicendam super articulis interrogatorijs ei per dictos Commissionarios ad tunc & ibidem ministrandis, septimo Articulo Interrogatorio ei ad tunc & ibidem per dictos Commissionarios ex parte prædicti I. L. ministrato dixit, & super sacramentum suum prædictum affirmavit, & deposuit, prout in hijs Anglicis verbis immediatè sequitur, viz. **To the 7. Interrogatorie he saith by vertue of his sayd oath, that the sayd Messuage was neuer occupied by the sayd H. M. the defendant,** prout per dictam depositionem prædicti E. F. inter alia per præfatos Commissionarios in dictam curiam Wardorum & liberationum certificatam & missam, ac ibidem de recordo ad huc remanentem, plenè apparet: vbi reuera & in facto, dictum messuagium diu occupatum fuit per prænominatum H. M. defendentem. Et sic, idem E. F. dicto vicesimo quarto die Iunij, Anno supradicto apud M. prædictam in dicto comitatu, coram prænominatis A. B. C. D. & E. F. (Commissionarijs dictæ dom. Reginæ sic vt præfertur existentibus) voluntariè, & corruptè, periurium commisit voluntarium & corruptum, contra formam diuersorum statutorum in huiusmodi casu prouisorum & editorum.

For killing a man by Witchcraft.

Iuratores præsentant pro domina Regina, Quòd Sara B. de C. in comitatu prædicto vidua, 20. die Aug. anno regni dictæ dom. nostræ Elizab. Dei gratia, Angliæ, Franciæ & Hybernix Reginæ, fidei defensoris, &c. Tricesimo, ac diuersis alijs diebus post dictū 20. diem, quasdam artes detestandas, Anglicè vocatas **witchcraft & Sozterie**, nequiter & felonice practicaui & exercuit apud C. prædict. in comitatu prædicto, in, super, & contra quendam Iohannem N. de C. præ-

Precedents.

prædicta in dicto comitatu **L**abourer, per quas quidem artes dictus I.N. à prædicto 20. die Augusti, Anno 30. supradicto, vsq; 24. diem prædicti mensis Augusti, Anno 30. supradicto, periculosissimè ac mortaliter ægrotabat & languebat, Ac eodem 24. die Augusti, Anno supradicto idem I.N. per Artes prædictas, apud C. prædict. in dicto comitatu obiit. Et sic iuratores prædicti præsentant, quod eadè Sara ipsum Iohannem N. apud C. prædictam modo & forma supradictis, ex malitia sua præcogitata, voluntariè, diabolicè, nequiter, & felonice per Artes prædictas occidit ac interfecit, contra pacè dictæ dom. Reg. nostræ, ac contra formā statuti in parlamento dictæ dom. Reg. nostræ (tento apud Westm. in comitatu Middlesexie, Anno regni sui prædicti 5.) in huiusmodi casu prouisi ac editi.

For bewitching a Horse.

Inquiratur pro Domina Regina, si Sara B. de C. in dicto comitatu vidua 20. die Augusti, Anno regni dictæ Dom. nostræ Elizabethæ, Dei gratia Angliæ, Fræciæ, & Hybernæ Reginæ fidei defensoris, &c. Tricesimo, quasdam Artes nequissimas (Anglicè vocatas **I**nchantments & Charmes) apud C. prædictam in comitatu prædicto, malitiosè & diabolicè, in, super, & contra quendam equum, coloris albi, pretij 4. libr. de bonis & catallis cuiusdam I.S. de C. prædicta in dicto comitatu generosi existentem, exercuit, & practicaui. Per quod idem equus dicti I. S. 20. die prædicto apud C. prædict. omnino empeioratus est, & vastatus: contra pacem dictæ Dom. Reginæ, ac contra formam statuti in eiusmodi casu prouisi, ac editi.

For fighting in the Churchyard.

Inquiratur pro domina Regina, si G.F. de Lin dicto comitatu generosus, octauo die Septembris, Anno regni dictæ dominæ nostræ Elizabethæ, dei gratia Angliæ,

Precedents.

Angliæ, Fræciæ, & Hybernæ Reginæ fidei defensoris &c. Tricesimo, in cæmeterio ecclesiæ parochialis de L. prædicta, in dicto comitatu, malitiose extraxit pugionem suum in quendam I. S. de L. prædicta **Yeoman**, ea intentione ad percutiendum prædictum I. S. cum dicto pugione, contra pacem dictæ dominæ Reginæ nostræ nunc, ac contra formam Statuti in parlamento domini Edwardi nuper Regis Angliæ sexti (tento apud Westmon. in comitatu Middlesexia, Anno regni dicti nuper domini Regis quinto) in huiusmodi casu prouisi, ac editi.

For a Burghlarie in a Church.

I Vratores præsentant pro Domina Regina, quod A. B. de C. in comitatu prædicto **Satler**, primo die Septembr. An. regni dictæ Dom. nostræ Elizabethæ Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, vi & armis ecclesiâ parochialem de C. prædicta in dicto comitatu, felonice & burghlariter fregit & intrauit noctanter, viz. inter horas decimam, & vndecimam post meridiem eiusdem diei, ac vnum calicem argenteum (Anglicè vocatum, a **Communion Cup**) ad valentiam 60. solidorum, de bonis & catallis parochianorum de C. prædicta ad tunc existentem in eadem ecclesia & tunc ibidem inuentum felonice cepit, & asportauit, contra pacem dictæ Dom. Reginæ nostræ nunc, coronam & dignitatem suam.

Endite-

Enditements & Presentments,

concerning Lay causes.

*For Counterfaising money, and for re-
ceiuing the Counterfaiser.*

I Vratores pro Dom. Regina præsentant,
quod T. S. de W. in comitatu prædicto
Tailor, machinans dictam Dominam
Reginam, & populum suum callidè &
proditoriè decipere, 20. die mensis De-
cembris, Anno regni dictæ Domine nostræ Elizabe-
thæ, Dei gratia Angliæ, Franciæ, & Hybernæ Regi-
næ, fidei defensoris, &c. Vicefimo nono, vnam peciam
monetæ apud W. prædictam in comitatu prædicto, de
stanno & alijs mixtis metallis, instar & ad similitudi-
nem bonæ & legalis monetæ & cunei dictæ Domine
nostræ huius regni sui Angliæ (vocatum Anglicè a
shilling, or peece of twelue pence) falso & prodit-
oriè fabricauit, cudidit, & contrefecit: posteaque, viz.
dicto die 20. Anno supradicto, eandem peciam (sic vt
præmittitur, falso, & proditoriè fabricatam & cōtro-
factam) diuersis ligeis dictæ Dom. Regine, pro vera &
legitima moneta huius regni sui Angliæ apud W.
prædictam in comitatu prædicto falso & proditoriè
exposuit & vtterauit. In magnam subditorum dictæ
Dom. nostræ deceptionem, ac contra pacem dictæ
Dom. nostræ, coronam, & dignitatem suam, necnon
contra formam diuersorum statutorum in eiusmodi
casu prouisorum & editorum. Et quod M. (vxor T. A.
de W. prædicta in dicto comitatu generosi) sciens
prænominatum T. S. prodicionem prædictam modo
& forma prædictis fecisse, & commississe, eundem ta-
men T. S. postea, viz. secundo die Februarij, Anno su-
pradicto apud W. prædictam in comitatu prædicto
receptauit, & confortauit, ac prodicionem prædictam
conclauit,

Precedents.

concelauit, contra pacem dictæ Domine Regine
nunc, coronam, & dignitatem suam.

*For petite Treason in a servant, and felo-
nie in the procurer thereof.*

I Vratores pro Domina Regina præsentant, quod
A.B. de C. in comitatu prædict. Glouer, nuper ser-
uiens B.D. de C. prædicta in dicto com. Glouer,
decimo die Septembris, Anno regni dictæ Dom. no-
stræ Eliz. Dei gratia Angliæ, Fran. & Hybernæ Regi-
na, fidei defensoris, &c. Tricesimo, in domo mansio-
nali prædicti B.D. apud C. prædict. in com. prædict.
vi & armis, viz. cum gladio & pugione districtis ad va-
lenciam x. solidorum (quos idem A. B. tunc & ibidem
in manibus suis tenuit) in prænominatum B. D. tunc
magistrum suum tunc & ibidem in pace dei & dictæ do-
minæ existentem, voluntariè & ex malitia sua præ-
cogitata insultum fecit, & eundem B. D. tunc magistrum
suum, ad tunc ibidem cum dict. gladio felonice & pro-
ditoriè super caput suum fortiter & validè percussit,
ita quod dicto ictu, caput ipsius B. D. tunc magistri sui
tunc ibidem in duas partes fudit, dans ei plagam mor-
talem: unde corpus dict. B. D. immediatè ibidem ad ter-
ram cecidit, & dictus B. D. instanter ibidem de plaga
prædict. mortuus est. Et sic præfatus A. B. apud C. præ-
dict. ex malitia sua præcogitata, eundem B. D. magistrum
suum præd. modo & forma prædictis, voluntariè, ne-
quiter, felonice, & proditoriè interfecit, contra pacem
dictæ Dom. nostræ Regine nunc, coronam, & dignita-
tem suas. Et quod quidam I. S. de C. prædicta in dicto
com. Glouer, ante prodicionem prædict. (per præfa-
tum A. B. sic ut prefertur volutariè perpetrata & cõ-
missa) viz. sexto die Sept. Anno supradicti, eundem
A. B. apud C. prædictam in comitatu prædicto, ad pro-
dicionem prædictam in forma prædicta perpetranda
& committendam, felonice consuluit, excita-
uit,

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uit, & procurauit, contra pacem dictæ Dominæ nostræ Reginæ nunc, ac contra coronam, & dignitatem suam.

*For murder of a Bastarde childe against the
mother and midwife (as principales) and against the
reputed father, as accessorie before, and a-
gainst others as accessories after.*

I Vratores pro Domina Regina præsentant, quod H. M. nuper de K. in com. prædicto vidua, grauida existens cum quadam infante viua, 24. die Maij, Anno regni dictæ Dom. nostræ Elizabethæ, Dei gratia Anglæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Secundo, apud K. prædict. in comitatu prædicto, Dei prouidentia parturiijt, & peperit vnā prolem femellam viuā: postea q̃; quædam Iana S. nuper de W. in dicto comitatu vidua, apud K. prædictam in comitatu prædicto, vi & armis, ex malitia sua præcogitata (dicto 24. die Maij anno supradicti, circa horam vndecimam ante meridiem eiusdem diei) per consilium, mandatum, & procuracionem prædictæ H. M. ac in præsentia ipsius H. M. in prædictam prolem femellam viuā insultum fecit, & cum quodam cultello (ad valentiam vnus denarij) quem eadem Iana tunc in manu sua dextra tenuit, guttur ipsius prolis femellæ ad tunc & ibidem felonice scidit, dans eidem proli femellæ quandam plagam mortalem in gutture suo prædicto, de qua quidem plaga mortali proles femella prædicta apud K. prædict. in com. prædicto, ad tunc & ibidem instanter obiit. Et quod prædicta H. M. ad tunc & ibidem felonice fuit præfens, confortans, & auxilians ad prædict. prolem femellam in forma prædicta interficiendam. Et sic præfata H. M. & Iana, prædictam prolem femellam ex malitia sua præcogitata, felonice, & voluntariè interfecerunt, & murtherauerunt, cōtra pacem dictæ D. Reg. coronæ, & dignitatem suā.
Et

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Et insuper Iuratores prædicti præsentant pro dicta Dom. Regina, quod Georgius P. nuper de K. prædicta in dicto comitatu Yeoman, 19. die Maij, Anno regni dictæ Domine Regine secundo, ac diuersis alijs diebus & vicibus ante feloniam & murdrum prædictum in forma prædicta perpetrat. apud K. prædictam in comitatu prædicto malitiosè & felonice consuluit, mandauit, procurauit & abettauit, prædictam H. M. ad prædictum murdrum voluntarium faciendum, ac ad interficiendum & murdrandum dictam prolem femellam, contra pacem dictæ Dom. Regine: Et ulterius, quod O. P. & A. B. de K. prædicta in comitatu prædicto **Spinsters**, post murdrum & feloniam prædictam in forma prædicta facta, scientes præfatas H. M. & Ianam S. feloniam & murdrum prædicta in forma prædicta fecisse & perpetrasse, ipsam tamen H. M. apud K. prædictam in comitatu prædicto (27. die dicti mensis Maij, anno supradicto) felonice receperunt, & confortauerunt, contra pacem dictæ Dom. Regine nunc, coronam, & dignitatem suam.

For wilfull poysoning.

Iuratores pro Domina Regina præsentant, quod T. R. de C. in comitatu prædicto Yeoman, secundo die Decembris, Anno regni dictæ Dom. nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Regine, fidei defensoris, &c. vicesimo quarto, apud C. prædictam in comitatu prædicto, in domo mansionali ibidem cuiusdam W. B. nuper de C. prædicta in dicto comitatu Yeoman, ex malitia sua prepenſa & præcogitata, voluntariè & felonice, porrexit ac dedit in catillo quodam eidem W. B. ad edendum, quædam olera (Anglicè vocata **Pottage**) ex cicuta venenosiſſima, & alijs herbis virulentis, confecta & composita, quæ quidem olera prædictus W. B. tunc ibidem cum cocleari (quod in manu sua dextra tenuit) comedit,

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edit, vnde prædictus W. B. statim postea ægrotabat, ac à prædicto 2. die, An. supradicti. in dicta domo sua apud C. prædictam languebat, vsq; sextum diem dicti mensis Decembris, Anno supradicto, quo quidem sexto die, Anno supradicto, prædictus W. B. ex dicto esu olerum prædictorum, in dicta domo sua apud C. prædictam in dicto comitatu interijt. Et sic Iuratores prædicti præsentant, quod prædictus T. H. prænominatum W. B. apud C. prædictam in comitatu prædicto, modo & forma supradictis, ex malitia sua præcogitata, voluntariè & felonice veneno prædicto interfecit ac murtheravit, contra pacem dictæ dom. Reginæ nunc, ac contra formam statuti in parlamento dom. Edwardi nuper regis Angliæ sexti (tento apud Westm. in comitatu Middlesex, Anno regni sui primo) in huiusmodi casu prouisi ac editi.

For a murder committed by two.

Iuratores pro domina Regina præsentant, quod A. B. nuper de C. in dicto comitatu **Blacksmith**, & D. E. de C. prædicta in comitatu prædicto **Butcher**, septimo die Septembris, Anno regni dictæ dom. nostræ Elizabethæ, Dei gratia Angliæ, Franciæ & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, vi & armis, ex malitia sua præmeditata, in quendam F. G. nuper de B. in dicto comitatu **Yeoman**, apud B. prædictam in comitatu prædicto, in quodam loco ibidem (vulgariter nuncupato **the Bowling place**) ad tunc & ibidem in pace Dei, & dictæ Domine Reginæ existentem, insultum fecerunt, & præfatus A. B. cum quodam gladio districto, ad valentiam 5. solid. quem ipse in manu sua dextra ad tunc & ibidem tenuit, ipsum F. G. super scinciput suum voluntariè & felonice tunc ibidem percussit, & eo ipso ictu dedit eidem F. G. quendam plagam mortale, in longitudine trium pollicium, & in profunditate quinq; pollicium & dimid. de
Xx. j. qua

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qua quidem mortali plaga, prædict. F. G. tunc ibidem
instante & immediatè obiit. Et ulterius, quod prædi-
ctus D. E. cum quodam Baculo ad valentiam vnus
oboli (quem ipse in manibus suis ad tunc ibidem te-
nuit) ipsum F. G. ad tunc & ibidem voluntariè & felo-
nicè percussit super caput suum, dans eidem F. G. v-
nam aliam plagam mortalem in dicto suo capite, in
longitudine trium pollicium, & in profunditate duo-
rum pollicium, unde idem F. G. de plaga ultimè præ-
dicta obiisset, si non obiisset de ictu illo priore prædi-
cto, quem prædictus A. B. ei primò dederat. Et sic Iu-
ratores prædicti dicunt, quod prænominati A. B. & D.
E. dicto septimo die Septembris Anno supradicti, a-
pud B. prædictam in prædicto loco (vocalo **the
Bowling place**) prædictum F. G. modo & forma
prædictis, ex malitia sua præcogitata, voluntariè, & fe-
lonicè interfecerunt & murtherauerunt, contra pacem
dictæ dominæ Reginae, ac contra coronam, & digni-
tatem suam.

Killing a man by Chance- medley.

Iuratores præsentant pro domina Regina, quod A.
B. de C. in dicto comitatu **Sowgelder**, decimo
sexto die Septembris, Anno regni dictæ dominæ
nostræ Elizabethæ, Dei gratia Angliæ, Franciæ &
Hybernæ Reginae, fidei defensoris, &c. Tricesimo, a-
pud C. prædictam in comitatu prædicto, quendam
E. F. nuper de C. prædicta in comitatu prædicto
Weauer (cui tunc ibidem fortuitò & casu obuiam
venit) contumeliosis verbis laceravit, ac in eundem
E. F. tunc & ibidem, in pace Dei ac dictæ Dominæ
Reginae existentem, vi & armis insultum fecit, &
ventrem dicti E. F. tunc & ibidem cum baculo lon-
go, cuspidè præacuta capitato (Anglicè vocalo **a
long sharpe piked staffe**) quem idem A. B. tunc i-
bidem

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ibidem in manibus suis tenuit, felonice pupugit & perfodit, dans eidem E. F. vulnus mortale in dicto ventre suo, latitudinis vnus pollicis, & profunditatis septem pollicium, de quo quidem mortali vulnere idem E. F. tunc ibidem instanter obiit ac interiit: contra pacem dictæ dominæ Reginæ nunc, & contra coronam & dignitatem suas.

*For pulling out of a mans
eyes.*

IVratores pro Domina Regina præsentant, quod A. B. de C. in dicto comitatu **Tinker**, nono die Septembris, Anno regni dictæ Dominæ nostræ Elizabethæ, Dei gratia, Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, in quodam loco apud C. prædictam in comitatu prædicto (vocato **le Dene**) vi & armis in quendam D. E. de C. prædicta in comitatu prædicto **Yeoman**, in pace dictæ Dominæ Reginæ tunc ibidem existentem, insultum fecit, ac tunc & ibidem ex malitia sua præcogitata, digitis & vnguibus digitorum ipsius A. B. oculos ipsius D. E. felonice effodit ac eruit, contra pacem dictæ Dominæ Reginæ nostræ, coronam, & dignitatem suam, ac contra formam cuiusdam Statuti in Parlamento domini Regis Henrici olim Regis Angliæ, 4. (tento apud Westmonasterium in comitatu Middlesex, Anno regni sui quinto) in huiusmodi casu proiussit & editi.

*For the Rape of a woman child, under
ten yeeres of age.*

IVratores pro domina Regina præsentant, quod G. D. de B. in comitatu prædicto **Waterman**, tertio
X x. ij. die

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die Iulij, Anno regni dictæ dominæ nostræ Elizabethæ, dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, apud B. prædictam in dicto comitatu (in domo mansionali ibidem cuiusdam A.S. *Hotteler*) vi & armis in quandā M.N. de B. prædicta in dicto comitatu puellam, infra ætatem decem annorum tunc existentem, insultum fecit, ac tunc & ibidem, eandem M.N. felonice ac carnaliter cognouit, ac eadem M. N. nequiter abusus est, contra pacem dictæ Dominæ Reginæ nunc, ac contra formam Statuti in Parlamento dictæ dominæ Reginæ nunc (tento apud Westm. in comitatu Middlesex, Anno dicti Regni sui decimo octauo) in huiusmodi casu prouisi ac editi.

*For the Rape of a Maid, above ten
yeeres old.*

I Vratores præsentant pro domina Regina, quod B.C. de E. in dicto comitatu *Taurner*, quinto die Octobris, Anno regni dictæ dom. nostræ Elizabethæ, dei gratia Angliæ, Franciæ & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, apud E. prædictam in dicto comitatu, in quodam ibidem loco (vocato *le Bowze*) vi & armis in quandam A. K. de E. prædicta in comitatu prædicto virginem, ætatis sex decem annorum, tunc ibidem in pace Dei & dictæ dominæ Reginæ existentem, insultum fecit, ac tunc & ibidem eandem A. contra voluntatem ipsius A. felonice rapuit, & carnaliter cognouit, contra pacem dictæ dominæ Reginæ nunc, ac contra formam cuiusdam Statuti in parlamento domini Edwardi olim Regis Angliæ primi, tento apud Westmonasterium in comitatu Middlesex, Anno regni sui tertio decimo, in huiusmodi casu prouisi & editi.

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For taking away a Widow (against her will) that hath lands.

IVratores præsentant pro domina Regina, quod A. B. de C. in dicto comitatu **Singingman**, secundo die Aprilis, Anno regni dictæ dom. nostræ Elizabethæ, dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, vi & armis in domum mansionalem cuiusdam H. B. de C. prædicta in comitatu prædicto viduæ, infra parochiam de C. prædicta in comitatu prædicto intrauit, (quæ quidem H. B. tum sesita fuit in dominico suo vt de feodo, de & in diuersis terris & tenementis in C. prædicta in comi. prædicto, clari annui valoris decem librarum vltra omnes reprisas existentibus) ac immediatè postea, viz. dicto secundo die Aprilis anno supradicti, idem A. B. prædictam H. B. tunc ibidem in dicta domo sua in pace Dei ac dictæ dominæ Reginæ existentem, ex dicta domo sua mansionali contra voluntatem ipsius H. B. illegitimè ac felonice extraxit, eripuit, & abduxit, ac eandem H. B. postea (scilicet tertio die dicti mensis Aprilis, Anno supradicti) in ecclesia parochiali de C. prædicta in comitatu prædicto, cepit in vxorem suam: vbi idem A. B. dicto tempore extractionis & abductionis prædictæ, non clamauit, nec clamare potuit, eandem H. B. tanquam Wardam suam, aut tanquam natiuam suam: In magnam pacis dictæ dominæ Reginæ nunc perturbationem, ac contra formam cuiusdam Statuti in parlamento domini Henrici nuper Regis Angliæ septimi, tento Anno regni sui tertio, in huiusmodi casu prouisi ac editi.

For Buggerie.

IVratores pro domina Regina præsentant, quod A. B. nuper de C. in dicto comitatu clericus (& alienigena in ciuitate Romana Italiæ natus) decimo die Martij, vi & armis, apud C. prædict. in comitatu prædicto,

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dicto, Anno regni dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris &c. Tricesimo, in quendam I.S. de C. prædicta in dicto comitatu puerum masculum (ætatis non amplius quindecim annorum, ac tunc ibidem in quodā loco vocato *le Arbre*, in pace dei & dictæ Dominæ Reginæ existentem) insultum fecit, ac cum dicto I.S. puero prædicto sceleratissimè, felonice, ac contra naturæ ordinem, tunc ibidem rem habuit venercam, dictumq; puerum carnaliter cognouit, ac sic cum eodem puero peccatum illud horribile, ac Zodomiticū (anglicè vocatum *Buggerte*) ad tunc ibidem felonice cōmisit, ac perpetravit, contra pacem dictæ dominæ Reginæ nostræ, ac contra formam statuti in huiusmodi casu antehac prouisi ac editi.

For Burghlarie of a dwelling house.

I Vratores pro domina Regina presentant, quod T. S. de W. in dicto comitatu *Cayloz*, quarto die mensis Februarij, An. regni dictæ dom. nostræ Elizabethæ, dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris &c. vicesimo nono, vi & armis domum mansionalem cuiusdem N.G. de W. prædicta in dicto comitatu *Butcher*, noctanter, viz. (inter horas decimā & vndecimam post meridiem eiusdem diei) quadam Ioanna vxore ipsius N.G. tunc in eadem domo in pace dei, & dictæ dominæ Reginæ existente, felonice & burghlariter fregit & intrauit, & viginti libras legalis monetæ Angliæ de bonis prædict. N.G. in quodā abaco in dicta domo existentes inuentas, tunc & ibidem felonice cepit & asportauit, contra pacem dictæ dominæ Reginæ nunc, coronam, & dignitatem suam.

For burning of a house by day.

I Vratores pro domina Regina presentant, quod A.B. nuper de C. in comitatu prædicto victuallier, octa-
uo

Precedents.

uo die mensis Iulij, Anno regni dictæ dominæ nostræ Elizabethæ, dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris &c. Tricesimo, ad domum mansionalem E. F. de C. prædicta in comitatu prædict. generosi, in C. prædicta in dicto comitatu existentem, vi & armis, inter horas sextam & septimam ante meridiem eiusdem diei accessit, & cum vna libra pulueris tormentarij ad valentiam 12. denar. & face quadam ignita, quæ dictus A. B. tunc ibidē in manibus suis tenuit, ignem in quodam fasciculo straminis tunc in dicta domo existentis, ex malitia sua præcogitata felonice accendit, vnde eadem domus tunc ibidem totaliter cremata & combusta fuit (eodem E. F. tunc in pace dictæ Dominæ Reginæ in dicta domo sua existente) Et sic prædictus A. B. dicto octauo die Iulij, Anno suprascripto, apud C. prædictam, domum mansionalem prædicti E. F. prædictam, modo & forma prædictis, voluntariè ex dicta malitia sua præcogitata, & felonice incendit & combussit: contra pacem dictæ dominæ Reginæ nostræ, ac contra coronam, & dignitatem suas,

For a robbery in the highway.

INquiratur pro domina Regina. Si A. B. de C. in dicto comitatu *Mariner*, sexto die mensis Octobris, Anno regni dictæ dominæ nostræ Elizabethæ, dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris &c. Tricesimo, vi & armis, viz. cum gladio, & pugione (ad valentiam 10. solid.) districtis, inter horas septimam & octauam ante meridiem eiusdem diei, in alta via Regia iuxta quendam locum (vocatū *Gads Hill*) infra parochiam de F. in comitatu prædicto, in, & super quendam I. S. de B. in comitatu prædicto, *Petite-Chapman*, tunc & ibidem in pace Dei, ac dictæ dominæ Reginæ existentem insultum fecit, & ipsum I. S. tunc ibidem cum dicto gladio

Xx.iiij.

per.

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percussit & vulnerauit, & 20. solidos legalis monetæ Angliæ numeratæ in crumena ipsius I. S. existentes, de bonis & catallis prædicti I. S. ad tunc & ibidem inuentos, à persona ipsius I. S. tunc & ibidem violenter & felonice cepit & asportauit, in magnum prædicti I. S. terrorem, ac contra pacem dictæ dominæ Reginæ, coronam, & dignitatem suas.

*For the taking of a purse priuile
from the person.*

I Vratores pro domina Regina presentant, quod I. S. nuper de A. in dicto comitatu **Taylor**, sexto die Iulij, Anno regni dictæ Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, apud A. prædictam in comitatu prædicto, in quodam loco ibidem, (vocato **the Elmes**) vi & armis in quendam R. M. de A. prædicta in comitatu prædict. **Grocer**, insultum fecit & viginti solidos in pecunijs numeratis in crumena ipsius R. M. tunc ibidem existentes inuentas, de prædicta crumena ipsius R. M. tunc & ibidem à persona ipsius R. M. (clàm & insciente ipso R. M.) felonice cepit & asportauit, contra pacem dictæ Dominæ Reginæ, ac contra coronam, & dignitatem suas.

*Against the stealer of Horse, and his
after accessorie.*

I Vratores pro Domina Regina presentant, quod A. B. nuper de C. in dicto comitatu **Gelder**, vicesimo nono die Augusti, Anno regni dictæ Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, vi & armis, quoddam stabulum in domo mansionali cuiusdam I. S. infra parochiam de C. prædicta in comitatu prædicto existens frégit, ac intrauit, & vnum equum spadonem (Anglicè vocatum a **Gelding**) coloris albi, pretij

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pretij 6. librarum, & vnam equam coloris nigri, pretij 30. solidorum de bonis & catallis ipsius I. S. tunc ibidem existentes inuentos, felonice cepit & abduxit, contra pacem dictæ Dominæ Reginæ, coronam, & dignitatem suas. Et quod K. H. nuper de C. prædicta in comitatu prædicto ~~hospitauerit~~, sciens præfatum A. B. feloniam prædictam apud C. prædictam modo & forma prædictis, fecisse & perpetrasse, eundem tamen A. B. apud C. prædictam in com. prædicto, Tricesimo die dicti mensis Augusti, Anno supradicto felonice recepit, & hospitio excepit, post feloniam prædictam sic per ipsum A. B. ut præfertur factam & commissam: contra pacem dictæ Dominæ nostræ Reginæ nunc, & contra coronam, ac regiam dignitatem suas.

Against a servant that stealeth his Masters goods, committed to his keeping.

I Vratores præsentant pro domina Regina, quod cum A. B. de C. in dicto comitatu ~~Mercer~~, vicesimo die Septembris, Anno regni Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, in domo mansionali ipsius A. B. apud C. prædictam in comitatu prædicto, deliberasset cuidam E. F. de C. prædicta in dicto comitatu ~~Mercer~~, tunc seruienti ipsius A. B. pro vno Anno integro retento, ac ætatis nouemdecem annorum existenti, decem libras in pecunijs numeratis de bonis ipsius A. B. ea intentione, ut idem E. F. eandem saluam custodiret, ad vsum prædicti A. B. tunc magistri sui: Idem E. F. dicto vicesimo die Septembris Anno supradicto (apprenticius dicti A. B. tunc non existens) apud C. prædictam in comitatu prædicto, à dicto magistro suo, vna cum prædictis decem libris dicti A. B. tunc magistri sui, malitiose & felonice discessit, abiit, & au fugit, ea intentione, ad furandum dictas decem libras,
contra

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contra fiduciam in eo per præfatum A. B. tunc magistrum suum repositam & collocatam, & ad inde dictum A. B. magistrum suum prædictum defraudandum: contra pacem dictæ Dominæ Reginæ, ac contra formam diuerforum Statutorum huius regni Angliæ in huiusmodi casu, prouisorum & editorum.

*Against the stealer of a Cowe, and his
Accessorie before.*

I Vratores pro Domina Regina præsentât, quod A. B. de C. in dicto comitatu **Shoomaker**, primo die Iunij, Anno regni dictæ Dom. nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, in quodam loco infra parochiam de C. prædicta in comitatu prædicto (vocalo **the Cowe pasture**) vi & armis, clausum cuiusdam I. S. de D. in comitatu prædicto **yeoman**, fregit & intrauit, & quandam vaccam (coloris nigri, pretij 40. solidorum) de bonis & catallis prædicti I. S. tunc ibidem existentem inuentam, felonice cepit, furatus est, & abduxit, contra pacem dictæ Dominæ Reginæ nunc, coronam & dignitatem suas. Et quod quidam G. H. de C. prædicta in dicto comitatu **Butcher**, ante feloniam prædictam, scilicet eodem primo die Iunij Anno Tricesimo supradicto, eundem A. B. apud C. prædictam in comitatu prædicto, ad feloniam prædictam faciendam & perpetrandam, malitiosè & felonice excitauit, persuasit, & procurauit, contra pacem dictæ Dominæ Reginæ, coronam, & dignitatem suam.

*For hunting by night in a parke, and
for concealing the same.*

I Vratores pro Domina Regina præsentant, quod secundo die Augusti, Anno regni Dom. nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ,

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Reginæ, fidei defensoris, &c. Tricesimo, inter horas decimam & vndecimam in nocte eiusdem dici A. B. de C. in dicto comitatu generosus, D. E. & G. H. de F. in dicto comitatu *Husbandmen*, aggregatis sibi nonnullis alijs malefactoribus ignotis, ad numerum sex personarum, vi & armis, videlicet, prælongis baculis, arcubalistis, & sagittis, clausum & parcum dictæ Dom. Reginæ nostræ apud O. in dicto comitatu fregerunt, & intrauerunt, & vnum par damarum dictæ Dom. Regi. (Anglice vocat. a *place of Bucks*) in dicto parco adtunc & ibidem depascent. inuent. illegitimè venati sunt, ac cum duobus sagittis ex dictis arcubalistis emissis, & sagittatis, adtunc & ibidem occiderunt, & asportauerunt, contra pacem dictæ Domine Reginæ: Ac quod postea die sequente, videlicet tertio die dicti mensis Augusti, Anno supradicto, T. S. tunc parcarius dictæ Domine Reginæ dicti sui parci de O. prædicta in comitatu prædicto, informauit apud C. prædictam T. W. vnum Iusticiariorum pacis dictæ Domine Reginæ in comitatu prædicto, de illicita venatione prædicta modo & forma prædictis facta, qui quidem Iusticiarius superinde warrantum suum in scriptis, postea, videlicet, dicto tertio die Augusti, Anno supradicto direxit cuidam K M. vni Constabulariorum Hundredi de S. in comitatu prædicto (in quo quidem Hundredo fixæ sunt prædictæ villæ de C. & F) eo tenore, vt idem Constabularius arrestaret prænominatos A. B. D. E. & G. H. ac eosdem coram eodem Iusticiario duceret & haberet, ad eos de dicta illicita venatione examinandum. Et quod dicti A. B. D. E. & G. H. postea, scilicet dicto tertio die Augusti Anno supradicto, coram dicto Iusticiario apud C. prædictam in Comitatu prædicto per Constabularium prædictum virtute dicti warranti adducti, ac per eundem Iusticiarium per suam discretionem de dicta illicita venatione, & de factoribus in ea parte examinati existentes, prædictam tamen venationem
volunta-

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voluntariè & felonice concealuerunt, & eorum quilibet voluntariè & felonice concealuit: Contra pacem dictæ Dominæ Reginæ, coronam, & dignitatem suas, necnō contra formā cuiusdam statuti in parlamento Domini Henrici nuper Regis Angliæ septimi tento, Anno regni sui primo, in huiusmodi casu prouisi ac editi.

*For writing of slanderous matter
against the Queens.*

I Vratores pro domina Regina presentant, quod A. B. nuper de C. in comitatu prædicto Clericus, vicesimo quinto die Iulij, Anno regni dict. dominæ nostræ Elizabethæ, dei gratia Angliæ, Franciæ & Hybernæ Reginæ, fidei defensoris &c. Tricesimo, apud G. in comitatu prædicto, consultè, & deliberatè, cum malitiosa intentione, & felonice quoddam scriptum Anglicè edidit & publicauit, continens (inter alia) hanc falsam, seditiosam, & scandalosam materiam, ad defamationem Maiestatis dictæ dominæ Reginæ nostræ nunc, viz. (*reciting the seditious wordes thereof*) contra pacem dictæ dominæ Reginæ nostræ, & regalem maiestatem suam, (cui ne in cogitatione quidem detrahere licet) ac contra formam cuiusdam statuti in parlamento dictæ dominæ Reginæ nostræ nunc, tento apud Westm. in comitatu Middlesex Anno regni sui vicesimo tertio, in huiusmodi casu prouisi ac editi.

*For a wilfull Rescusse of one imprisoned
in the stocks for felonie.*

I Vratores pro domina regina presentant, quod vicesimo die Iunij, Anno regni dictæ dominæ nostræ Elizabeth. Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris &c. Tricesimo, quidam A. B. nuper de C. in dicto comitatu Glouer, apud C. prædictam

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dictam in comitatu prædicto, captus est & arrestatus per E. F. de C. prædicta in comitatu prædicto **Yeoman**, pro suspitione cuiusdam felonix, viz. vnus vacæ ipsius E. F. per præfatum A. B. felonice (vt idem E. F. tunc assererat) captæ & abductæ, & quod idem A. B. immediate postea traditus est per præfatum E. F. cuidam H. M. tunc constabulario hundredi de N. in quo sita est villa de C. prædicta: qui quidem constabularius apud C. prædictam in comitatu prædicto, postea, viz. dicto vicesimo die Iunij Anno Tricesimo supradicto, eundem A. B. in prisona in cippis ibidem posuit, ad eum saluò ibidem custodiendum, donec idem Constabularius parare posset auxilium ad ducendum eundem A. B. coram aliquo Iusticiariorum pacis dictæ dominæ Reginæ in comitatu prædicto examinandum: Ac quod postea, (scilicet dicto vicesimo die anno supradicto) quidam G. L. de C. prædicta in comitatu prædicto **Glouer**, apud C. prædictam in dicto comitatu, vi & armis cippos prædictos effregit: ac eundem A. B. tunc ibidem existentem ex eisdem custodia, prisona, & cippis felonice cepit, eripuit & rescussit, ac ad largum ire & euadere permisit, contra pacem dictæ Dominæ Reginæ, coronam, & dignitatem suas.

For the breaking of prison.

Inquiratur pro Domina Regina, si W. H. de C. in comitatu prædicto **yeoman**, vnus Constabulariorum dictæ Dominæ Reginæ Hundredi sui de T. in comitatu prædicto (in quo quidem Hundredo scita est villa de C. prædicta) quendam R. B. nuper de C. prædicta in comitatu prædicto **Tailor**, vicesimo die Septembris, Anno regni dictæ Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, apud C. prædictam in dicto comitatu, pro suspitione cuiusdam felonix (viz. pro

morte

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morte cuiusdam M.N. apud H. in comitatu prædicto felonice interfecti) cepit & arrestavit : Et ea de causa idem R.B. sub custodia dicti W. H. Constabularij, in prisona dictæ Domine Regine apud C. prædictam in comitatu prædicto, postea, scilicet dicto vicesimo dicto Septembris Anno supradicto fortiter, & duriter detentus fuerit, Ac idem R.B. tunc ibidem sic detentus, postea, (videlicet, dictis die & anno) apud C. prædictam in Comitatu prædicto, vi & armis prædictam prisonam ibidem felonice fregit, ac extra custodiam dicti Constabularij tunc ibidem, contra eius voluntatem felonice euasit : contra pacem dictæ Domine Regine nostræ nunc, coronam & dignitatem suas, necnon contra formam statuti in huiusmodi casu promissi ac editi.

*For a voluntarie Escape of a Felon,
out of the Gaole.*

Kanc. **I**uratores pro Domina Regina præsentant, quod vbi quidam A.B. nuper de C. in dicto comitatu **Shoo-maker**, sexto die Maij, An. regni dom. nostræ Elizabethæ, dei gratia Angliæ, Franciæ, & Hybernæ Regine, fidei defensoris, &c. Tricesimo, apud C. prædict. in comitatu prædict. pro suspicione cuiusdam felonie (viz. vnus Equi, coloris albi, pretij 40. solid. felonice per eundem A.B. vt dicebatur, capti & abducti) arrestatus est & captus, & coram T. F. vno Iusticiariorum dictæ domine Regine ad pacem in dicto comitatu conseruandam assignatorum ductus, & super inde postea, viz. dictis die, anno, & loco, cuiusdam B. D. in comitatu prædicto **peoman**, custodi Gaolæ dictæ dom. Regine apud M. in dicto comitatu existenti (sub custodia I. F. armigeri, ad tunc vicecomitis conitatus prædicti, & custodis Gaolæ prædictæ) per quoddam præceptum de *Mittinus* dicti T. F. Iusticiarij traditus est & commissus, ad saluò & securè custodiendum in
Gaola

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Gaola prædicta, donec idem A. B. inde foret legitimo modo deliberatus: præfatus tamen I. F. (tunc vicecomes) postea, viz. septimo die dicti mensis Maij Anno supradicto, apud M prædictam in comitatu prædicto, præfatum A. B. (ad tunc & ibidem in dictis gaola & custodia existentem) à prædictis custodia & gaola, ad tunc & ibidem euadere & ad largum ire voluntariè, & felonice permittit, contra pacem dictæ dom. Reginæ, coronam, & dignitatem suam.

And for a negligent escape, the underlined words may be changed thus: pro defectu bonæ & diligentis custodiæ, euadere, & ad largum quò voluit ire, negligenter permittit, contra pacem, &c. As before.

*For selling a Horse to a Scottishman,
to be conveyed into
Scotland.*

Iuratores pro Domina Regina præsentant, quod quarto die mensis Iulij, Anno regni dictæ Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, A. B. de C. in dicto Comitatu **Blacke Smith**, apud quendam locum vocatum **le ferrie**, (in C. prædicta in Comitatu prædicto existentem) vnum equum castratum (Anglicè dictum a **Gelding**) coloris albi, & pretij quatuor librarum legalis monetæ Angliæ, cuidam A. D. generoso (natione homini Scoto) pro summa quatuor librarum in pecunijs numeratis prædicto A. B. per præfatum A. D. tunc ibidem solutis, voluntariè vendidit. Ac tunc ibidem eundem equum eidem A. D. ea intentione ad equum prædictum in regnum Scotiæ abducendum & conueiandum, (absque aliqua speciali licentia dictæ Dominæ

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Dominæ Reginæ nostræ nunc, per literas suas patentes sub magno Sigillo Angliæ ad idem sic faciendum inde prius obtenta) voluntariè & felonice tradidit ac deliberavit, contra pacem dictæ Dominæ Reginæ nostræ nunc, ac in enervationem huius regni sui Angliæ, necnon contra formam diuerforum statutorum in huiusmodi casu præantea prouisorum & editorum

Vpon a Rebellious Assemblie.

IVratores pro domina Regina præsentant, Quod primo die mensis Octobris, Anno regni Dom. nostræ Elizabethæ, Dei graria Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, A. B. C. D. E. F. And so reciting thirteene or fouerteene persons in all, with their additions of occupations and dwellings, apud quendam locum intra parochiam de O. in comitatu prædicto, (Anglicè vocatum **le old Court**) inter horas decimam & vndecimam ante meridiem eiusdem diei, vi & armis, tam inuasivis, quàm defensivis, videlicet, gladijs, pugionibus, Baculis, arcubus, sagittis, tunicis, ferreis, & tormentis, seipsos congregauerunt & assemblauerunt: Ac tunc ibidem intenderunt, conati sunt, & practicauerunt, vi & armis, illegitimè, & ex autoritate sua propria, secare, & prorsus euertere, prosterne-
re ac destruere quoddam caput vnus aquæ ductus (Anglice vocatum a **conduct head**) tunc ibidem in fundo cuiusdam R. S. de O. prædicta in comitatu prædicto generosi existens, & cursum aquæ in ipso habens, ea intentione, vt idem caput aquæ ductus prædicti ex tunc apertum & vacuum remaneret ac iaceret: Et vltèrius, quod super quarimonia inde facta coram T. W. vno Iusticiariorum pacis dictæ Dom. Reginæ in comitatu prædicto, omnes & singuli prædicti A. B. C. D. E. F. &c. tunc & ibidem per eundem Iusticiarium requisiti sunt ac iussi (per proclamationem
in

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in nomine dictæ dom. Reginae tunc ibidem per eum palam factam) ad habitationes, loca, & domos suas (vnde venerant) se inde in pacifico modo retrahere; retirare, discedere & reuerti: quæ quidem proclamatio tunc ibidem modo & forma sequentibus, habita & facta est, viz. prædictus T. W. Iusticiarius tunc ibidem fecit alta voce vnum *Oyes*, ac tunc ibidem immediatè hæc verba anglica sequentia palam, & alta voce pronunciauit, dicens scilicet, *The Queene our Soueraigne Ladie chargeth, and commandeth all persons (being assembled) immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawfull businesse vpon the paines contained in the Acte latelie made against unlawfull and rebellious assemblies : And God saue the Queene*. Et vltèrius, Iuratores prædicti dicunt, quod non obstante dicta proclamatione modo & forma prædictis per præfatum Iusticiarium tunc ibidem facta & habita, iidem tamè omnes & singuli prædicti A.B. C.D.E.F. &c. in dicto loco vocato *le old Court* infra parochiam de O. prædicta in dicto comitatu per spacium duarum horarum, immediatè & continuè post dictam proclamationem sic vt præfertur factam & habitam sequentium, seditiosè & felonice insimul remanserunt & cōtinuauerunt, in magnum dictæ Dominæ Reginae contemptum, ac contra pacem, coronam, & dignitatem suas, necnon contra formam diuersorum Statutorum in huiusmodi casu prouisorum & editorum.

For unlawfull purueiance.

Iuratores pro domina Regina presentant, quod primo die Iunij, Anno regni dominæ nostræ Elizabethæ, dei gratia Angliæ, Franciæ, & Hybernæ Re-

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ginæ, fidei defensoris &c. Tricesimo, quidam H.W. nuper de G. in dicto comitatu **Tippet**, apud C. in comitatu prædicto, præse ferens, & asserens se esse vnum ex prouisoribus & emptoribus hospitij dictæ dominæ Reginæ, dicto primo die, Anno suprædicto (quo quidem tempore nullum ostendit aut secum habuit warrantum sub magno aut paruo Sigillo dictæ dominæ Reginæ) apud C. prædictam in comitatu prædict. tres oues castratas (anglicè vocatas **weathers**,) precij viginti solidorum, de bonis & catallis I.S. de C. prædicta in dicto comitatu **peoman** tunc ibidem existentes inuentas, sub colore purueiariæ pro dicto hospitio, illegitimè ac felonice cepit & abduxit: Contra pacem dictæ dominæ Reginæ, ac contra formam diuersorum Statutorum in huiusmodi casu prouisorum & editorum.

For slanderous speech against the Queenes Maiestie.

Iuratores pro domina Regina presentant, quod infra tres menses iam vltimò elapsos, viz. secundo die mensis Octobris, Anno regni dominæ nostræ Elizabethæ, dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris &c. Tricesimo, G.P. de A. in dicto comitatu **Labourer**, in domo mansionali cuiusdam R.S. infra parochiam de A. prædicta in comitatu prædicto, ac in presentia multorum dictæ dominæ Reginæ subditorum fide dignorum tunc ibidem existentium, consultò, deliberatè, ac cum maliriosa intentione aduersus dictam dominam Reginam nostram nunc, ex imaginatione ipsius G. P. propria, hæc falsa, seditiosa, & scandalosa dicta, ad scandalum & defamationem dictæ dominæ Reginæ nostræ, tunc & ibidem loquutus est, vt in his Anglicis verbis sequitur, viz.
(**Reciting the wordes themselves.**) In magnum
dictæ

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dictæ dominæ Reginæ nostræ nunc contemptum, ac contra pacem, coronam, & dignitatem suas, nec non contra formam Statuti in Parlamento dictæ dominæ nostræ nuper tento apud Westmonasterium in comitatu Middlesexiæ, Anno regni sui vicesimo tertio, in huiusmodi casu prouisi ac editi.

For a Trespasse of Batterie and Mayheme.

I Vratores presentant pro domina Regina, quod tertio die Septembris, Anno regni dominæ nostræ Elizabethæ, dei gratia Angliæ, Franciæ & Hybernæ Reginæ, fidei defensoris &c. Tricesimo, A.B. de C. in comitatu prædicto *Taylor*, vi & armis quoddam clausum cuiusdam I.S. apud C. prædictam in comitatu prædict. fregit & intrauit, & in dictum I.S. tunc ibidem in pace dei & dictæ dominæ Reginæ existentem, insultum & affrayam fecit, ac cum gladio districto, ad valentiam decem solidor. quem dictus A. B. tunc ibidem in leua manu sua tenuit, eundem I. S. crudeliter verberauit, vulnerauit, ac dextrum pollicem dicti I. S. tunc ibidem vno ictu amputauit, ac sic eundem I. S. nequiter & felonice tunc ibidem maihemauit, ad graue incommodum ipsius I.S. ac contra pacem dictæ dominæ Reginæ nostræ, coronam, & dignitatem suam.

For a Champertie.

I Vratores pro domina Regina presentant, quod I. C. I. C. ac I. P. de O. in dicto comitatu *Yeo-*
men, ac alij (de confederatione & couina prædictorum, I. C. T. C. & I. P. existentes) quoddam placitum assisæ nouæ dissefinæ (quod nuper summonitum fuit in curia dictæ Dominæ Reginæ, coram dilectis & fidelibus dictæ Dominæ Reginæ I. S. & I. K. & alijs nuper Iusticiarijs ipsius Dominæ Reginæ,
Y y. ij.

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ginæ, ad assisam illam capiendam assignatis, per Breue ipsius dom. Reginæ inter W.S. querentem, & I.H. tenentem, de libero quodam tenemento in N & S. in comitatu prædicto, (viz. pro medietate inde sibi & heredibus suis imperpetuum) viz. pro 100. libr. sterlingorum in pecunia numerata in hac parte habenda, per conventionem inde inter prædictum N.S. & præfatos I.C. T.C. & I.P. 20. die mensis Augusti, Anno regni dictæ dom. nostræ Elizabethæ, dei gratia, Angliæ, Franciæ & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo apud O. prædictam in dicto comitatu factam, pro prædicto W.S. contra præfatum I.H. dictis die, Anno, & loco, assumpserunt manutenendum, & manutenuerunt: In magnum dictæ dom. Reginæ contemptum, ac contra formam diversorum Statutorum, huius regni sui Angliæ, in huiusmodi casu prouisorum ac editorum.

*For a Trespasse of depasturing corne
and grasse.*

INquiratur pro domina Regina, Si A.B. de C. in dicto comitatu **Yeoman**, 20. die mensis Augusti, Anno regni dom. nostræ Elizabethæ, Dei gratia Angliæ, Franciæ & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, quoddam clausum cuiusdam I.S. apud C. prædictam in comitatu prædicto (vulgariter vocatum **Cow leafe**) vi & armis fregit ac intrauit, ac herbas, & blada triticea ipsius I.S. tunc ibidem crescentia (ad valentiam 20. sol.) cum quibusdam bobus, & bidentibus ipsius A.B. tunc ibidem depastus est ac consumpsit, Nec non solum & fundum ipsius I.S. tunc ibidem cum quodam aratro subuertit, per quod prædict. I.S. omne commodum & proficium dicti soli sui, per longum tempus postea amisit, Ac alia damna & enormia prædicto I.S. tunc ibidem intulit, ad graue damnum ipsius I.S. ac contra pacem dictæ dom. nostræ Reginæ nunc, coronam & dignitatem suas,

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For Embracerie of Iurors.

Iuratores præsentant pro Domina Regina, quod A. B. C. D. E. F. G. H. &c. complices I. K. naming all the Iurors, &c. iurat. in quadam assisa nouæ dissensionis (quæ nuper summonita fuit coram dilectis & fidelibus dictæ Dominæ Reginæ I. B. I. C. & N. C. nuper Iusticiarijs dictæ Dominæ Reginæ nunc ad assisam illam capiendam, per Breue ipsius Dominæ Reginæ inter W. S. & I. H. de tenementis in N. in comitatu prædicto, & postmodum, (viz die Lunæ, &c. Anno, &c. coram præfatis I. B. I. C. &c. apud M. in comitatu prædicto per Breue ipsius Dominæ Reginæ, si non omnes capt. possit.) pro veredicto suo in hac parte dicendo, de præfato I. H. diuersas pecuniarum summas, viz. A. B. de prædicto I. H. 40. solid. & alia dona, scilicet panem, carnes, & vinum ad valentiam 20. solidorum. Et prædictus I. K. (Imbraciator eiusdem assise ad eandem ducendam & procurandam) de prænominato W. S. summā 10. marcarum, vicessimo die Augusti, Anno regni dictæ Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, apud M. prædictam in comitatu prædicto, illegitimè ceperunt. In dictæ Dominæ Reginæ nunc contemptum, ac contra formam cuiusdam statuti parlamento Domini Edwardi olim Regis Angliæ tertij, Anno regni sui Tricesimo octauo tento, in huiusmodi casu prouisi ac editi.

Against a common Barretour.

Iuratores pro Domina Regina præsentant, quod A. B. de C. in dicto comitatu Tailor, secundo die Octobris, Anno regni dictæ Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, apud C. prædictam in comitatu prædicto, fuit, & adhuc est communis Barretator, & pacis dictæ Dominæ Reginæ

Y y. iij. pertur-

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perturbator assiduus & publicus, necnon communis ac turbulentus calumniator, conuiciator, pugnator, & litium inter vicinos suos seminator, adeo vt diuersas lites, controuersias, necnon iurgia, & pugnas ad tuac ibidem, & alibi in dicto comitatu, inter diuersos dictæ Dominae Reginae ligeos & subditos, mouit, procurauit, & excitauit: In magnam dictæ Dominae Reginae pacis perturbationem, ac contra formam diuersorum ordinationum ac statutorum huius regni sui Angliæ, in huiusmodi casu antehac prouisorum ac editorum.

*For conuerting ground of Tillage into
Pasture.*

I Vratores præsentant pro dom. Regina, quod H. W. de A. in dicto comitatu generosus, primo die Nouem. Anno regni dictæ dom. nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & hybernæ Reginae, fidei defensor. &c. Tricesimo, seissitus existens in dominico suo vt de feodo, de, & in 12. acris terræ arabilis in A. prædict. in com. prædicto iacentibus, (ac de, aut in aliqua libera warrenna non existentibus, sed per spacium 4. annorū dictum primū diem Nouemb. An. supradicti proximè precedentium, in cultura & seminatione granorum visitatis & applicatis) dicto primo die Nouemb. An. supradicti, ac diuersis alijs diebus & vicibus, antea, & post, prædict. 12. acras terræ arabilis, à cultura prædict. & satione granorum, vsq; in hunc diem præsentem, in pasturā pro cuniculis custodiendis conuertebat, & adhuc conuertit & custodit: Ad graue nocūmentum bladorum I. R. R. T. & W. M. de A. prædict. in com. (vicinorum ibidē existentium) ac contra formam diuersorum Statutorū in huiusmodi casu prouisorum & editorum.

For Extortion in a Coroner.

I Nquiratur pro dom. Regina, si A. C. de B. in dicto comitatu generosus, 6. die Iunij, Anno regni dom. nostræ

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stræ Elizabethæ, dei gratia Angliæ, Franciæ & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, vnus coronatorum dictæ Dom. Reginæ in dicto comitatu ad tunc existens, apud B. prædictam in comitatu prædict. colore officij sui prædicti extorsit cepit pro feodo suo 20. sol. de quodam I. S. in dicto comitatu generoso, in, & pro functione & executione officij sui prædicti, super visum corporis R. N. nuper de B. prædicta in com. prædicto (qui quidem R. N. 5. die dicti mensis Iunij, Anno supradicto, apud B. prædict. in com. prædict. casu, ab equo suo, per infortunium fuit occisus) in magnum dictæ dom. Reginæ contemptum, ac contra formam statuti in parlamento Domini Henrici nuper Regis Angliæ octauo tento, Anno regni sui primo, in huiusmodi casu prouisi ac editi.

*For Extortion in a bishops Scribe,
or Register,*

Iuratores pro dom. Regina præsentant, quod A. B. de C. in dicto com. generosus, primo die mensis Augusti, Anno regni dicti dom. nostræ Elizabethæ, Dei gratia Angliæ, Franciæ & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, (ad tunc scriba, (sive Registrarius) reuerendi in Christo patris, D. tunc permissione diuina Hagustaldensis episcopi existens) apud M. in comitatu prædicto, colore officij sui prædicti, extorsit ac iniuriolè cepit de quodam I. S. de M. prædicta in dicto comitatu Husbandman, duos solidos legalis monetæ Angliæ, pro feodo ipsius A. B. pro scriptione probacionis vnius testamēti cuiusdam R. N. (qui quidem R. N. apud M. prædictam infra diocēsem dicti D. Episcopi vicesimo quarto die Iulij, Anno supradicto mortuus est) vbi reuera idem Testamentum tunc ibidem allatum est ad dictum Scribam (sive Registrarium) per dictum I. S. in pergamento scriptum: & vbi omnia bona, iura, & credita dicti

Yy. iij.

R. N.

Precedents.

R.N. dicto tempore dictæ mortis suæ non excedebant summā quinque librarum: & ubi etiam tota dicta scriptio probationis testamenti prædicti per præfatum Scribam (sive Registrarium) sic ut præfertur facta, non continebat in se quadraginta lineas, quarum quæque linea erat decem pollicium in longitudine: In magnum dictæ Dom. Reginæ contemptum, ac contra formam cuiusdam statuti in parlamento Domini Henrici nuper Regis Angliæ octavi tento Anno regni sui vicefimo primo, in huiusmodi casu prouisi ac editi.

For a riotous affray, at the quarter Sessions of the Peace.

Iuratores pro domina Regina presentant, quod octauo die Octobris Anno regni dictæ dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris &c. Tricesimo, apud M. in comitatu prædicto tempore generalis Sessionis pacis pro dicto comitatu tunc ibidem tentæ, & H. C. milite, & socijs suis Iusticiarijs dictæ dominæ Reginæ, ad pacem in dicto comitatu conseruandam assignatis tunc ibidem existentibus, & in plena curia sedentibus, quidam A. B. C. D. E. F. G. H. & I. K. de S. in comitatu prædicto generosi, aggregatis sibi nonnullis ahjs pacis dictæ dominæ Reginæ perturbatoribus ignotis, ad numerum 20. hominum, vi & armis, viz. gladijs, & pugionibus armat. illicitè, routosè, & riotosè sese assemblauerunt ac inter se insultum & affraiam maximam tunc ibidem fecerunt, sese inuicem verberantes & vulnerantes, in magnum terrorem tam dictorum Iusticiariorum tunc ibidem in curia sedentium, quam totius populi dictæ dom. Reginæ ad dictam sessionem pacis tunc ibidem conuenientium, ac contra pacem, coronam, & dignitatem dictæ dom. Reginæ nostræ.

Precedents.

For giuing of a Linerie.

I Vratores pro domina Regina præsentant, quod T. B. de C. in dicto comitatu armiger, secundo die Septembris, Anno regni dictæ dom. nostræ Elizabethæ Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ, fidei defensoris, &c. Tricesimo, apud C. prædict. in comitatu prædicto, quasdam liberatas vesturæ, viz. cuidam A.B. de C. prædicta in comitatu prædicto **peoman**, tres vlnas panni lanei, coloris veneti, pretij 20. sol. & C.D. de E. in dicto comitatu **peoman**, alias tres vlnas similis panni lanei, eorundem coloris & pretij, ad duas separales tunicas pro præfatis A.B. & C.D. inde faciendas, dedit ac distribuit: vbi reuera præfati A.B. & C.D. aut eorum alter, nunquam fuerant, aut fuit domestici seruijentes aut domesticus seruiens, officarij, siue officarius, Balliui siue Balliuus dicti T.B. aut de consilio ipsius T.B. in vna lege siue altera eruditi vel eruditus: In magnum dictæ dom. Reginæ contemptum, ac contra formam diuersorum Statutorum in huiusmodi casu prouisorum & editorum.

For receiuing and vsing of a Linerie.

I Vratores pro Domina Regina præsentant, quod A. B. de C. in dicto comitatu **peoman**, vnā liberatam panni, viz. tres vlnas panni lanei, coloris veneti (vocati Anglice *watchet*) ad valentiam 20. solid. ad tunicam inde sibi faciendam de T.B. de C. prædicta in comitatu prædicto armigero, apud C. prædictam in dicto comitatu, secundo die Augusti, Anno regni dictæ dom. nostræ Elizabethæ, Dei gratia Angliæ, Franciæ & Hyberniæ Reginæ, fidei defensoris, &c. Tricesimo, recepit: & eadem tunica à dicto die secundo, anno supradicto, vsque tertium diem mensis Septembris, Anno supradicto, apud C. prædictam & alibi in diuersis locis infra comitatum prædictum vsus est: vbi idem
A.B.

Precedents.

A.B. dicto tempore receptionis liberatæ prædict. aut vnquam postea non fuit familiaris, officarius, aut de consilio dicti T.B. in vna lege aut altera eruditus : In magnum dictæ dom. Reginæ contemptum, ac contra formam diuersorum Statutorum in huiusmodi casu antehac prouisorum, & editorum.

For Vsurie.

I Vratores pro domina Regina præsentant, quod vbi A.B. de C. in dicto comitatu ~~Merce~~ primo die Octobris, Anno regni dom. nostræ Elizabethæ, dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, apud C. prædictam in dicto comitatu mutuò dedisset, & accommodasset cuidam D.E. de C. prædicta in dicto comitatu ~~Shoomaker~~, summam 20. libr. in pecunijs numeratis de pecunijs dicti A.B. ea intentione, vt idem D.E. viginti libras eidem A.B. redderet & resolveret primo die Aprilis tunc proximè futuro : Idem A.B. ad tunc & ibidem iniuste cepit & habuit præ manibus, de prænominato D.E. viginti sex solidos in lucro, vsura, & proficuo pro differendo & dando diem solutionis sic vt profertur earundem 20. lib. à dicto primo die Octobris Anno supradicto, vsque dictum 1. diem Aprilis tunc proximè sequentem, qui quidem viginti sex solidi (modo & forma prædictis, præ manibus capti & habiti) multò excedunt & superant ratam & proportionem decem librarum pro centum libris pro vno anno integro accommodand. ad damnum non mediocrè ipsius D. E. ac in contemptum dictæ Dominæ Reginæ nunc, nec non contra formam diuersorum statutorum in huiusmodi casu prouisorum & editorum.

*Against Bakers, conspiring to make
small bread.*

I Vratores pro Domina Regina præsentant, quod A. B. C.D. E.F. & G.H. de M. in dicto Comitatu pistorum,

Precedents.

stores, 2. die Octobris, Anno regni Dominae nostrae Elizabethae, Dei gratia Angliae, Franciae, & Hyberniae Reginae, fidei defensoris, &c. Tricesimo, apud M. praedictam, in Comitatu praedicto, insimul conuenerunt, conspirauerunt, ac mutuo inter se promiserunt, quod panis denarij de integro frumeto (per eos seu eorum aliquem, tum deinceps faciendus ac vendendus) non amplius quam 2. libras & sex uncias Troiae ponderis habebit & ponderabit, (quodcunque imposterum foret unius quarterij frumenti pretium:) In dicta Dominae nostrae Reginae nunc contemptum, ac in extremum pauperum dictae Dom. Reginae subditorum grauamen, necnon contra formam diuersorum Statutorum in huiusmodi casu prouisorum & editorum.

For a common Bridge, that is in dangerous decay.

Iuratores pro Domina Regina praesentant, quod Kanc.
pons publicus & communis, situs in alta Regia via
super flumen de *Medway*, infra parochiam de A.
in Comitatu praedicto (vulgariter dictus *Wpleseford*
Bridge) est, & per aliquot annos iam proxime lapsos fuit, valde ruinosus, & in maximo decasu, ob defectum reparationis, adeo ut subditi dictae Dominae Reginae, in, super, trans, vel ultra dictum pontem, per se, vel cum eorum equis, bigis aut cariagi, ire, redire, aut transire, sine magno vitae discrimine non audent aut possunt, ad commune nocumentum omnium vicinorum, & compatriatarum in dicto comitatu habitantium, quorum interest ratione negotiorum suorum illac transire: Et ulterius, quod prorsus nescitur, quae personae quaeue terrae, tenementa, aut corpora corporata & politica, eundem pontem, aut aliquam inde parcellam, ex iure, aut ex antiqua consuetudine, reficere & reparare debent, aut consueuerunt.

Precedenti

*For a Rogue, or Vagabond, and
his reliever.*

I Vratores pro dom. Regina præsentant, quod A. B. nuper de C. in dicto comitatu. *Straelman*, ætatis 14. annorum & amplius, ac corpore sano, valente, potente, atque ad laborandum habili existens, nullam autem habens terram, aut vllum magistrum, nec aliqua vrens licita merchandiza, arte, vel mysteria unde sibi victum parare posset, ac prorsus nesciens rationem reddere quo pacto victum suum legitime acquirat, decimo die Augusti, Anno regni Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, apud E. infra Hundredum de W. in comitatu prædicto, & multis alijs in locis dicti comitatus, hæc illac passim vagatus est mendicans, ac per W. P. de E. prædicta in dicto comitatu *yeoman*, constabularium dicti Hundredi de W. (in quo sita est villa de E. prædicta) postea, viz. vndecimo die dicti mensis Aug. Anno supradicti, apud E. prædictam in comitatu prædicto inuentus est vagans, & mendicans, ac per eundem constabularium tunc ibidem deprehensus est inordinate se gerens, tanquam vagabundus, & mendicus valens: contra pacem dictæ Dominæ Reginæ, ac contra formam diuersorum Statutorum in diuersis parliamentis dictæ Dominæ Reginæ nunc inde promissorum & editorum: Et ulterius, quod G. H. de E. prædicta in dicto comitatu *yeoman*, sciens præfatum A. B. modo & forma prædictis vagantem & mendicantem, eundem tamen A. B. dicto decimo die Anno supradicti in domo ipsius G. H. mansionali apud E. prædictam in comitatu prædicto hospitauit, & eidem A. B. tunc ibidem panem & potum voluntarie dedit, in contempnium dictæ Dominæ Reginæ, ac contra formam statutorum prædictorum.

Precedents.

*For keeping a Tippling house without
licence.*

I Vratores pro Domina Regina presentant, quod A. Kanc.
B. de C. in dict. com. **yeoman**, vicesimo die mensis
Octobris, Anno regni dominæ nostræ Elizabethæ,
Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fi-
dei defensoris, &c. Tricesimo, & continuè multis die-
bus postea, viz. vsque primum diem dicti Octobris,
Anno supradicti, apud C. prædict. in comitatu præ-
dicto, obstinatè, atque ex auctoritate propria ipsius
A.B. & sine vlla Iusticiariorum pacis dictæ Dominæ
Reginæ in comitatu prædicto admissione aut alloca-
tione, assumpsit super se custodire, & custodiuit vnā
communem Tabernam (Anglicè vocatam a **com-**
mon Tippling house) & ibidem dicto vicesimo
die, & dictis diebus tum postea, communiter & pub-
licè vendidit ceruisiam, panem, & potum (Anglicè di-
ctum **Weere**) diuersis dictæ Dominæ Reginæ ligeis
& subditis. In dictæ dominæ Reginæ contemptum, ac
contra formam cuiusdam Statuti, in parlamento do-
mini Edwardi nuper Regis Angliæ sexti, tento apud
Westmon. Anno regni dicti domini Edwardi quinto,
in huiusmodi casu proui & editi.

*For keeping vnlawfull play, and for
playing thereas.*

I Vratores pro domina Regina presentant, quod A.
B. de C. in dicto comitatu **Tippler**, secundo die Sep-
tembris, Anno regni dominæ nostræ Elizabethæ, Dei
gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei de-
fensoris, &c. Tricesimo, & continuè post dictum diem
Anno supradicti, vsque primum diem mensis Octo-
bris Anno supradicti, apud C. prædictam in comitatu
prædicto, quendam communem locum iaciendi glo-
bos (vocatum Anglicè, **A common Bowling Ale-**
ley)

Precedents.

Iey) pro lucro ipsius A.B. proprio, & ad ludendū tunc ibidem cum globis (Anglicè vocatis **Bowles**) illicite tenuit, custodiuit, ac manutenuit, contra formam cuiusdam Statuti in parlamento dom. Henrici nuper Regis Angliæ 8. tento anno regni sui, 33. in huiusmodi casu prouisi & editi: Et quod I.S. de C. prædicta in dicto comitatu **Labourer**, & tres aliæ personæ ignoræ, dicto secundo die Septemb Anno supradicto, dictū communem locum vsitauerunt, ac tunc ibidem cum globis (Anglicè vocatis **Bowles**) in simul & illicite luserunt, contra formam Statuti prædicti.

For hunting of Conies.

I Vratores pro Domina Regina præsentant, quod A. B. de C. in dicto comitatu **Labourer**, (homo laicus existens) à festo Sancti Bartholomæi Apostoli, Anno regni Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, continuè vsque in hunc præsentem diem, apud C. prædictam in comitatu prædicto, habuit & custodiuit vnum canem græcum (Anglicè vocatum a **Greyhounde**) ad venandum & chaceandum lepores & cuniculos: Et quod idem A.B. vicesimo septimo die mensis Augusti, Anno supradicto, vnum cuniculum valoris 4. denarios, in quodam claufo I.S. de C. prædicta in dicto comitatu generosi (vocato **the Coniegarth**) infra parochiam de C. prædictā dicto comitatu existent. cum dicto cane venturus est, & occidit, vbi idem A.B. nunquam habuit terras aut tenementa, ad clarum annuum valorem quadraginta solidorum: In dictæ Dominæ Reginæ contemptum, ac contra formam cuiusdam Statuti in parlamento Domini Richardi, olim Regis Angliæ secundi, tento Anno regni sui tertio decimo, in hoc casu prouisi ac editi.

For

Precedents.

*For vsing the Arte of Mercerie, a-
gainst the Statute.*

IVratores pro Domina Regina præsentant, quod A. B. de C. in dicto comitatu *Mercer*, vicesimo die mensis Maii, Anno regni dictæ Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, & multis alijs diebus continuè post dictum diem per spacium duorum mensium, videlicet, vsque tricesimum diem Iulij, anno supradicto, apud C. prædictam in comitatu prædicto, quandam artem, siue mysteriam (Anglicè dictam *Mercerie*) illicitè pro lucro suo proprio visitauit & exercuit: tunc ibidem vendendo diuersas res siue merces (Anglicè vocatas *Mercerie wares*) diuersis dictæ Dominæ Reginæ ligeis & subditis: vbi reuera idem A. B. nunquam fuit in dicta arte siue mysteria educatus tanquam apprenticius per spacium septem annorum, nec idem A. B. eandem artem (siue mysteriam prædictam) vnquam ante prædictum vicesimum diem, Anno supradicto visitauerit, aut exercuerit: In magnum dictæ Dominæ Reginæ contemptum, ac contra formam cuiusdam Statuti, in Parlamento dictæ Dominæ Reginæ nostræ nunc, tento apud Westmonast. Anno regni sui quinto, in hoc casu prouisi ac editi.

For wearing Silke.

IVratores pro Domina Regina præsentant, quod A. B. de C. in dicto Comitatu *Calloz*, natus infra hoc regnum Angliæ, videlicet, apud C. prædictam, sed filius aut hæres apparens alicuius militis, aut filius hominis altioris gradus non existens, nec potens expendere per annum viginti libras, in terris, tenementis, feodis, officijs, aut alijs annuis reuentionibus, pro termino vitæ suæ: nec valens
ducentas

Precedents.

ducentas libras de bonis suis proprijs : nec vnquam Maior, Balius, Aldermannus, aut capitularis officarius in aliqua Ciuitate, burgo, aut villa corporata existens, nec dictæ dom. Regina seruens in ordinario (vtens dictæ dom. Regina liberata) existens : 20. tamen die Octobris, anno regni dictæ dom. nostræ Elizabethæ, Dei gratia, Angliæ, Franciæ, & Hybernæ Regina, fidei defensoris, &c. Tricesimo, apud C. prædictam in comitatu prædicto, per totum dictum 20. diē Anno supradicto, in interiore parte cuiusdam pilei sui (Anglicè vocati a **C**ap) quodam serico (Anglicè dicto **Cassata**) (ad valorem 2. solidorum) illicitè & palam vsus est: contra formam cuiusdam Statuti, in parlamento Philippi & Mariæ nuper Regis & Regina Angliæ tento apud Westm. in comitatu Middlesex, Annis regnorum suorum, primo & secundo, in huiusmodi casu prouisi & editi.

For regrating of fish and butter.

I Vratores pro domina Regina presentant, quod A. B. de C. in dicto comitatu **Merter**, 20. die Iulij Anno regni dictæ dominæ nostræ Elizabethæ, dei gratia Angliæ, Franciæ, & Hybernæ Regina, fidei defensoris &c. Tricesimo, apud C. prædictam in comitatu prædicto, in quodam mereatu tunc ibidem tento pro 40. solid. monetæ emit, regratauit, obtinuit, & nactus est in possessionem & manus suas, decē paria piscium (Anglicè dicta, **tenne couples of Lings**) & tria vasa butyri salis (Anglicè vocata **three firkins of salt butter**,) de quodam E. F. qui prædicta decem paria piscium, ac dicta tria vasa butyri ad eundem mercatum vt ea ad tunc ibidem venderet adduxisset: Et quod immediatè postea, scilicet dicto 20. die An. supradicto, idem A. B. in dicto eodem pleno mercatu tunc ibidem apud C. prædictam in dicto comitatu tento, eadem omnia dicta paria piscium, ac butyri va-
sa,

Precedents.

sa, cuidam H. R. pro sexaginta solidis legalis monetæ dictæ dominæ Reginæ huius regni sui Angliæ, illicitè vendidit, in magnum reipublicæ damnum, ac contra formam diuersorum Statutorum huius regni Angliæ in huiusmodi casu prouisorum & editorum.

For not working upon the High wayes.

Iuratores pro domina Regina præsentant, quod vbi die Martis in septimana paschæ iā vltimò præteritæ, scilicet septimo die mensis Aprilis, An. regni dictæ dominæ nostræ Elizabethæ, dei gratia Angliæ, Franciæ & Hybernæ Reginæ, fidei defensoris &c. Tricesimo, A. B. tunc Constabularius villæ de C. in dicto comitatu, & D. E. & F. G. tum guardiani ecclesiæ parochialis de C. prædicta in comitatu prædicto existentes, vocatis ad se multis alijs parochianis dictæ parochiæ de C. tunc & ibidem elegerunt quosdam I. S. & R. N. duas honestas eiusdem parochiæ personas, in superuiores pro vno anno integro tunc proximè sequenti, pro emendatione & reparatione altarum regiarum viarum infra dictam parochiam de C. ducentium à villis mercatorijs, ad villas mercatorias: Ac etiam tunc ibidem nominauerunt & appunctuauerunt sex dies, viz. 1 : 2 : 3 : 4 : 5 : & 6, dies mensis Maij tunc proximè sequentis, pro dicta emendatione dictarum viarum, & nominationem pro emendatione illius viæ Regiæ ibidem quæ est inter, &c. atque de eisdem sex diebus (sic per eos vt præfertur nominatis & appunctuatis) dederunt palam postea, (scilicet die dominico dict. Pasch, tunc proximè sequenti) publicam notitiam in dicta ecclesia parochiali : Quidam tamen T. W. tum & adhuc parochianus de C. prædicta in comitatu prædicto existens, ac tum habens & occupans in dicta parochia de C. in comitatu prædicto vnam integram carucatam terræ arabilis (Anglicè dictam a ploughland) nullum dictis primo secundo, &

Precedents.

quarto diebus dicti mensis Maij A.n. supradict. prorsus inuenit, aut misit currum instructum (Anglicè dictum *a Waine, or Carte furnished*) equis, bobus, aut alijs animalibus, & necessarijs, secundum morem patriæ ibidem: nec ullos habiles homines, erga emendationem & reparationem dictarum viarum, aut earum aliquam, siue aliquam inde parcellam: sed inde tunc ibidem voluntarie fecit defaltam: in dictæ Domina Reginae contemptum, ac contra formam diuersorum Statutorum in huiusmodi casu prouisorum & editorum.

Against a Goldsmith.

Iuratores pro Domina Regina præsentant, quod A. B. de S. in dicto comitatu Aurifaber, secundo die Iulij Anno regni dictæ Domina Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Regine, fidei defensoris, &c. Tricesimo, apud S. prædictam in Comitatu prædicto, quoddam manubrium pugionis ferrei (Anglicè dictum *a dagger hilt of yron*) cuiusdam E.D. de S. prædicta in dicto comitatu *ysoman*, valoris duorum solidorum, auro purissimo ad valentiam quinque solidorum deaurauit, (Anglicè *did Gildde with the finest Golde*) in magnum Reipublicæ detrimentum, ac contra formam cuiusdam Statuti in Parlamento Domini Henrici noni per Regis Angliæ quinti, tento Anno regni sui octauo, in huiusmodi casu prouisi & editi.

For taking of Pheasantes and Parriches.

Iuratores pro Domina Regina præsentant, quod W.G. de S. in dicto Comitatu *Labourer*, circiter horam decimam ante meridiem vicesimi diei Augusti,

Precedents.

Augusti, Anno regni dictæ Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Regi-
næ, fidei defensoris, &c. Tricesimo, in quodam loco
infra parochiam de S. prædicta in Comitatu prædicto
(vocat. vulgariter, *the wheate fiede*) qui quidem
locus tunc fuit, & adhuc est liberum tenementum A.
B. de S. prædicta in dicto Comitatu generosi (nec
vnquam fuit in, aut de warrenna ipsius W.G. propria)
duos phasianos, & decem perdices, cum quibus-
dam reticulis, & alijs ingenijs (valoris duorum soli-
dorum) tunc ibidem cepit, occidit, & asportauit, sine
aliquibus assensu, aggreamento, aut speciali licentia
dicti A.B. in hac parte habitis aut obtentis: In dictæ
Dominæ Reginæ nunc contemptum, ac contra for-
mam cuiusdam Statuti in Parlamento Domini Hen-
rici nuper Regis Angliæ septimi, tento Anno regni sui
vndecimo, in huiusmodi casu prouisi & editi.

For not keeping watch in a Towne.

Iuratores pro domina Regina præsentant, quod à
decimo die Iunij, Anno regni dictæ Dominæ no-
stræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hy-
bernæ Reginæ, fidei defensoris, &c. Tricesimo, vsque
vltimum diem mensis Augusti Anno supradicto, ho-
mines & inhabitantes villæ de C. in Comitatu prædi-
cto, nullas vigilias à solis occasu vsque ad solis ortum,
in dicta villa de C. in comitatu prædicto, per aliquot
homines, fecerunt, aut custodierunt, prout de iure
& antiqua consuetudine facere debent & solebant: In
dictæ dominæ Reginæ nunc contemptum, ac contra
formam cuiusdam Statuti, in Parlamento domini
Edwardi olim Regis Angliæ primi, apud Wynton
Anno regni sui tertio decimo tento, in huiusmodi ca-
su prouisi & editi.

Precedents.

For not keeping watch at the Sea coast.

Iuratores pro domina Regina presentant, quod ubi homines & inhabitantes hundredi de F. in comitatu prædicto, antiquitus (viz. ante annum regni dom. Henrici nuper Regis Angliæ quarti quintum) quasdam maritimas & minutas vigilias (Anglicè vocatas *Seawatch*), tempore belli per costeram maris in quodam loco (vocato *Sandgate*) in dicto comitatu, per quatuor homines singulis noctibus (à tempore in cuius contrarium memoria hominum tunc non existerat) custodire debebant & solebant: dicti tamen hundredi de F. homines & inhabitantes nunc, tempore nuper belli, viz. à vicesimo quarto die Iulij, Anno regni dictæ Domine nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, vsq; tricesimum primum diem dicti mensis Iulij, Anno supradicto, prædictas vigilias apud *Sandgate* prædictam, modo & forma prædictis, fatere, & custodire voluntariè prætermiserunt & neglexerunt, ac in eisdem vigilijs tunc ibidem (sic ut præfertur faciendis ac custodiendis) voluntariam fecerunt defaultam: In dicta Domina Regina contemptum, ac huius regni sui Angliæ discrimen non modicum, necnon contra formam Statuti in Parlamento dicti Domini Henrici nuper Regis Angliæ quarti, tento Anno regni sui quinto prædicto, in huiusmodi casu prouisi ac editi.

*For not keeping a Gelding fit for the
warres.*

Iuratores pro Domina Regina presentant, quod ubi A.B. de C. in dicto comitatu generosus, à primo die Iunij, Anno regni dictæ Domine nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hybernæ Reginæ, fidei defensoris, &c. Tricesimo, vsque in hunc
pre-

Precedents.

presentem diem, terras & tenementa in C. prædicta in dicto comitatu eidem A.B.& heredibus suis in feodo simplici, ad clarum annuum valorem ceterum marcarum & amplius ultra omnes reprisas habuerit, ac renuerit: Idem tamen A. B. per totum tempus prædictum, viz. à dicto primo die Iunij, Anno supradicto vsque nunc, nullum habuit, custodiuit, manutenuit, aut sustinuit equum castratum (Anglicè dictū a gelding) habilem & idoneum pro levis armaturæ equite (Anglicè, able, and meete for a light horseman) in dictæ Dominæ Reginæ contemptum, ac in magnam huius regni sui Angliæ enervationem, nec non contra formam cuiusdam Statuti, in Parlamento Philippi & Mariæ nuper Regis & Reginæ Angliæ, tento apud Westm. annis regnorum suorum quarto & quinto, in huiusmodi casu prouisi ac editi.

Hitherto of Enditements and presentments: for a further direction wherein, the Reader may haue recourse to the fift chapter of the fourth Booke of the *Eirenarcha* before: in which hee shall finde sundrie rules for the right framing of them.

Processe vpon Enditements
and Presentments taken out of the
old imprinted Booke of the Iu-
stices of Peace.

Note that the Processe (vpon an Endite-
ment of Treason, or Felonie) is vsually,

A Capias.

A Capias alias.

An Exigi facias.

And in euery such Capias. there ought to be
thre weekes space betweens the Date and the
Returne thereof.

The *Capias* is thus :

Elizabeth Dei gratia Angliæ, Franciæ & Hyber-
niæ Regina, fidei defensor, &c. vicecomiti Kanc.
salutem : Præcipimus tibi, quod non omittas
propter aliquam libertatem in Balliua tua, quin eam
ingrediaris, & capias A.B. de C. in dicto comitatu
tuo **Labourer**, & cum saluo custodire facias : Ita
quod habeas corpus eius coram custodibus pacis no-
stræ, nec non Iusticiarijs nostris ad diuersa feloni-
as, transgressiones, & alia malefacta in dicto comi-
tatu tuo perpetrata audiendum & terminandum as-
signatis, ad proximam generalem Sessionem pacis
Comitatus tui post clausum Paschæ proximè futu-
ræ tenendam (vbicunque in eodem comitatu re-
neri contigerit) ad respondendum nobis tunc ibi-
dem de quadam feloniam vnde indictatus existit. Præ-
cipimus etiam tibi, quod non omittas propter ali-
quam libertatem in balliua tua prædicta, quin dili-
genter

Procesſes.

genter inquiras quæ bona & catalla prædictus A. B. habet in balliua tua, & ea in manus noſtras ſeiſiri facias, vt vlteriùs inde fieri poſſit, prout de iure, & ſecundum legem & conſuetudinem Regni noſtri Angliæ fuerit faciendum. Et habeas ibi tunc hoc præceptum. Teſte H. Co. milite, apud M. prædictam in comitatu prædicto 24. die Februarij, Anno regni noſtri, Triceſimo.

The alias Capias.

ELizabetha Dei gratia Angliæ, Franciæ, & Hybernæ Regina, fidei deſenſor, &c. Vicecomiti Kanc. ſalutem: Præcipimus tibi (ſicut alias tibi præcepimus) quod non omittas propter aliquam libertatem in balliua tua, quin eam ingrediaris, & Capias A. B. de C. in comitatu tuo *Labourer, and ſo word for word as the Capias beſore, changing the dayes onely.*

The Exigi facias.

ELizabeth Dei gratia, Angliæ, Franciæ & Hybernæ Regina fidei deſenſor, &c. vicecomiti Kanc. ſalutem: Præcipimus tibi, quod exigi facias, A. B. de C. in comitatu tuo *Labourer*, de comitatu in comitatum, quouſque ſecundum legem & conſuetudinem regni noſtri Angliæ vtlagetur ſi non comparuerit: & ſi comparuerit, tunc eum capias, & ſaluò eum cuſtodiri facias, ita quod habeas corpus eius coram cuſtodibus pacis noſtræ, nec non Juſticiarijs noſtris, ad diuerſa felonias, tranſgreſſiones, & alia malefacta in dicto Comitatu perpetrata audiendum & terminandum assignatis, ad generalem Sessionem pacis Comitatus tui proximè poſt feſtum Sancti Michaelis Archangeli proximè futuri tenendam (vbicunque in eodem Comitatu teneri contigerit) ad

Processus.

ad respondendum nobis de quadam feloniam unde indictatus existit, & unde tu ipse mandasti coram prefatis Iusticiariis nostris (tali die &c.) quod prefatus A. B. non est inuentus in Balliuatu tuo, & habeas tunc ibi hoc breue. Teste. H. C. milite, apud M. in comitatu predicto sexto die Septembris, Anno regni nostri Tricesimo.

Ad quem diem I. F. Armiger, vicecomes comitatus predicti retornauit, quod ad comitatum suum tentum apud P. 4. die Maii, Anno regni dom. Regine nunc, &c. (and so, shewing the dayes of his other foure countiees) predictus A. B. exactus fuit, & non comparuit, & propterea vilagatus fuit.

The common Prozesse vpon other Presentments (not being in Felonie, nor specially set forth in Statutes) is in that old booke declared to be, first,

A Venire facias thus,

Elizabeth Dei gratia Angliæ, Franciæ & Hyberniz Regina, fidei defensor, &c. vicecomiti Kanc. salutem: Præcipimus tibi, quod nō omittas propter aliquam libertatem in Balliuatu tuo, quin venire facias A. B. de C. in dicto comitatu tuo *peoman*, coram custodibus pacis nostræ, nec non Iusticiariis nostris ad diuersa felonias, transgressiones, & alia malefacta in dicto comitatu perpetrata audiendum & terminandum assignatis, ad generalem Sessionem pacis comitatus tui proximè post, &c. ad respondendum nobis super quibusdam articulis super ipsum A. B. presentatis, & habeas ibi tunc hoc preceptum. Teste &c.

And if vpon this Venire facias the partie be returned sufficient, then a Distringas must go out,

Processes.

out, and so the same Processe infinite, but till
he come in : which is thus,

Elizabeth Dei gratia, Angliæ, Franciæ & Hyber-
niæ Regina fidei defensor, &c. vicecomiti Kanc.
salutem : Præcipimus tibi, quod nō omittas prop-
ter aliquam libertatem in Balliua tua, quin eam ingre-
diaris & distringas A. B. de C. in comitat. tuo **yeoman**,
per omnia terras & tenementa, &c. Et quod de exiti-
bus eorum respondeas, &c. Et quod habeas corpus e-
ius coram præfatis Iusticiarijs, &c. ad respondendum,
&c. Teste &c.

But if Nihil habet he returned at the first a-
gainst him, then a Capias,

an Alias Capias,
a Pluries Capias, which hath no
change but the word Pluries for
Alias: and lastly, an Exigi facias,
must be awarded against him.

ibid.

This is the generall process, the speciall must
be sought for in the eight Chapter of the fourth
booke of the Eirenarcha before, and in those Sta-
tures which do namely appoint them.

A *Superfedeas* to stay the taking of one
that is endited of some *Trespasse*,
or contempt.

Elizabetha Dei gratia Angliæ, Franciæ, & Hy-
berniciæ Regina, fidei defensor, &c. Vicecomiti
Kanc. salutem : Quia A. B. de C. in dicto comitatu
Yeoman, venit in Curia nostra coram H. C. milite, &
socijs suis (Custodibus pacis nostræ, ac Iusticiarijs no-
stris ad diuersa felonias, &c. assignatis) apud M. tali die
&c. Et inuenit sufficientes manucaptos essendi co-
ram præfatis Iusticiarijs, ad proximam generalem Ses-
sionem

Processus.

tionem pacis in dicto comitatu tenendam, ad respondendum nobis de quibusdam transgressionibus super ipsum presentatis. Ideo tibi præcepimus, quod de capi-
piendo præfatum A. B. seu ipsum imprisonando, vel eum ea de causa aliquo modo molestando, omnino superse-
des. Et si eum ea de causa & non alia ceperis, tunc ipsum sine delatione deliberari facias. Teste præ-
faro H. C. milite apud M. prædictam, die & anno &c.

*A Superse-
des to stay the Exigi facias
upon an Endisement off felonie.*

E Lizabeth dei gratia Angliæ, Franciæ, & Hyber-
niæ Regina, fidei defensor, &c. vicecomiti Kanc.
salutem. Quia A. B. de C. in dicto comitatu tuo
pro man, venit in curiam nostram apud M. tali die &c.
coram H. Co. milite, & socijs suis (custodibus pacis
nostræ, necnon iusticiarijs &c.) ac se reddidit prisonæ
nostræ (occasione quarundam feloniarum unde co-
ram eis indictatus est) ut in eadem moretur, sicut no-
bis constat: *Quia*, (Quia inuenit nobis suffici-
entem manu capionem essendi coram præfatis ius-
ticiarijs ad proximam generalem Sessionem pacis
in dicto comitatu tenendam, ad respondendum nobis
de quibusdam felonijs, unde coram eis indictatus ex-
istit) Ideo tibi præcipimus, quod de ulterius exigendo
præfatum A. B. ad aliquem comitatum tuum, vel eum
imprisonando, siue ipsum ea occasione molestan-
do, omnino superse-
des. Et habeas tibi hoc Breue.
Teste &c.

Some other formes of Superse-
des be in that olde booke, proceeding from
one iustice of peace, which I doe preter-
mit, because I see not how they be war-
ranted at this day. Nevertheless this
precept following, I will drawe from
thence,

Procesſes.

thence, that others may aduiſe vpon it
with me.

*For the remoouing of petie
Conſtables.*

Elizabeth dei gratia &c. vicecomiti Middleſexſæ,
necnon capitali conſtabulario villæ hundredi de
W. & eorum cuilibet, ſalutem: Quia W. P. & R. S.
ſubconſtabularij villæ de C. & K. (certis de cauſis
nos mouentibus) ab officio ſuo amoueri & exonerari
fecimus: Ideo vobis & cuilibet veſtrum coniunctim &
diuiſim precipimus & mandamus, quod I. F. & R. M.
ad omnia & ſingula eidem officio incumbencia bene
& fideliter exercenda & exequenda (prout ipſi nobis
inde reſpondere voluerint) iurare faciatis: dictiſque
W. P. & R. S. ſimiliter iniungentes, quod ipſi de dicto
officio vltcriùs exercendo & exequendo nullatenus
ſe intromittant, quoſq; aliud de nobis habuerint man-
datum. Et quicquid inde feceritis, luſticiarijs noſtris
ad pacem noſtram in dicto comitatu conſeruandam
aſſignatis, ad proximam generalem Seſſionem pacis
apud C. in dicto comitatu tenendam, certificetis, hoc
præceptum noſtrum tunc & ibidem remittentes. Teſte
T. M. vno luſticiarorum noſtrorum prædictorum,
tali die. &c.

*A writ of reſtitution vpon the Statute
(21. H. 8. ca. 11.) to the owner of
goods ſtollen.*

Elizabeth dei gratia &c. I. F. Balliuo de M. in co-
mitatu noſtro Kanc. generoſo, Salutem. Quia I. S.
nuper de O. in dicto comitatu **labourer**, nuper
indictatus, reſtatus, & legitimo modo per patriã apud
M. in comitatu prædicto coram H. Co. milite & ſocijs
ſuis

Processus.

suis custodibus pacis nostræ, necnon Iusticiarijs nostris ad diuersas felonias, transgressiones, & alia malefacta in dicto comitatu perpretata audiendum & terminandum assignatis, ratione euidentie per E. H. de L. in comitatu prædicto contra eundem I. S. datæ inuentus fuit culpabilis, de eo quod idem I. S. 2. die Maij, anno regni nostri 30. apud O. prædictam in comitatu prædicto, duas vaccas (coloris rubei, ad valentiam trium librarum) de bonis & catallis præfati G. H. ad tunc ibidem inuentas felonice cepit, & abduxit: Ideo tibi præcipimus, pariter & mandamus, quod si bona & catalla prædicta, vel aliqua inde percella, ad manus tuas deuenerunt, tunc tu bona & catalla prædicta eidem G. H. deliberari facias indilate. Testibus præfato H. C. milite, & A. B. Armigero vno Iusticiariorum prædictorum apud M. prædictam, 24. die Septemb. Anno regni nostri Tricesimo.

The Returne of a *Certiorari*, sent to remove an *Enditement*, may be thus fashioned.

First, upon the backside of the Writ of Certiorari, endorce these, or the like words.

Executio istius Breuis pater, in quadam Scedula eidem Breui annexa.

And that Scedule may be thus:

Ego A. B. vnus custodum pacis, ac Iusticiariorum Dominæ Reginæ, ad pacem in dicto com. Kanc. conseruandam, necnon ad diuersa felonias, transgressiones, & alia malefacta in eodem comitatu perpetrata audiendum & terminandum assignatorum, virtute istius

Processus.

stius Brevis mihi deliberati, Indictamentum illud (unde in dicto Breui fit mentio) una cum omnibus idem Indictamentum tangentibus, in Cancellariam dictae Dominae Reginae, distincte & aperte sub sigillo meo certifico. In cuius rei fidem & testimonium, ego praefatus A.B. hijs praesentibus sigillum meum apposui:
Datum die mensis Anno regni, &c.

Then take the Recorde of the Enditement, and close it within this Schedule, and seale them both vp together.



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